

Note



17 January 2014

To HM Treasury

HMT REVIEW OF THE BALANCE OF COMPETENCES – SINGLE MARKET: FINANCIAL SERVICES AND THE FREE MOVEMENT OF CAPITAL

PAYMENTS COUNCIL RESPONSE

1 ABOUT THE PAYMENTS COUNCIL

The Payments Council is the body with responsibility for ensuring that payment services work for all those that use them in the UK. We work with the financial institutions in the payments industry as well as customers, regulators and public policy stakeholders to develop innovation in payments and implement change so that individuals and businesses have access to payments for their current and future needs.

We have three main objectives:

- To have a strategic vision for payments and lead the future development of co-operative payment services in the UK;
- To ensure payment systems are open, accountable and transparent; and
- To ensure the operational efficiency, effectiveness and integrity of payment services in the UK.



2 PAYMENTS COUNCIL RESPONSE

Based on our experience in the area of financial services (specifically payments) we are responding to the call for evidence and providing answers to those questions on page 41 of the consultation document that were deemed relevant. Please find our response below.

2.1 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?

One of the biggest issues for our Members is dealing with the sheer quantity of new and updated legislation being produced by the European Commission. These challenges also extend to other organisations (particularly smaller firms and new entrants to the market), who must ensure knowledge of and compliance with all relevant legislation.

Furthermore it is not clear to what extent all the different legislation is being viewed together and holistically by the Commission. It should be a requirement that the impact assessments carried out for new legislation include detailed analysis of the proposed new rules and how they will sit alongside current legislation (ensuring that they do not conflict and/or create unintended consequences).

In terms of the contrast between the uses of Regulations and Directive, clearly there is a case for, and often value in, providing for some flexibility in legislation in order to take into account specific situations in individual Member States. However, in the case of the Payment Services Directive (PSD), for example, which is the legal framework underpinning payments in Europe, the transposition process (from 2009 onwards) was problematic. Not only are there 23 possible derogations, but Member States have also gold-plated and in some instances interpreted the text differently. Furthermore, the timing of the transposition proved to cause difficulties for providers of cross-border credit transfers. E.g. where a payment was made from a country that had implemented the PSD to a country that had not, the sender was responsible for ensuring that the payment was in compliance, end-to-end, with the Directive even though the recipient banks had no such obligation. Therefore we would see, for example, payments from the UK with charges deducted by Polish banks even though the sender in the UK was responsible for the full sum being received by the beneficiary, according to UK's PSD implementing legislation.

We believe that more consideration should be given to improving the sequencing of legislation, i.e. it would be helpful if the Commission ensures that the reviews of pieces of



legislation that deal with similar issues are aligned as far as possible. In 2012, in the area of payments, the legislators did not take an effective approach to reviewing current legislation and creating new legislation. As well as the reviews of the PSD and the E-Money Directive, the EC also issued a Green Paper on Cards, Internet and Mobile Payments, which was incredibly broad-ranging. The output from this Green Paper is due to be incorporated partly in changes to the PSD (which was as a result significantly delayed), partly in new legislative instruments (such as a proposed regulation on multilateral interchange fees), partly in adaptations to the SEPA (Single Euro Payments Area) governance model, and partly in non-legislative proposals, such as the ECB SecuRe Pay Forum Recommendations. Although the EC acknowledged that there was significant overlap between these issues, these elements were not addressed together but in a piecemeal fashion. This is not a helpful approach and leaves all market participants with uncertainty and confusion. Furthermore, it leads to concerns that as a result the overview/bigger-picture of the cumulative effect of the new legislation/rules has not been properly thought through.

Perhaps the EC could consider having a longer timeframe for producing legislation and monitoring implementation, rather than relying on reviews. As an example, the EC wasn't able to meet its timeframe for reviewing the PSD as the sheer scale of issues to be covered had increased significantly. Allowing for more time to deal with regulation (transposition and implementation) may give more certainty to different market participants.

We also note that some products/services are regulated differently but have an equivalent use, for example, this can be seen in the Payment Services Directive (64/2007) vs. the E-Money Directive (60/2005). Business models now overlap both directives (with Electronic Money institutions (EMIs) and Payment Institutions (PIs) competing for the same business under different regulatory regimes). Furthermore, the Directives share common features (definitions, capital, conduct, information rules, exemptions, etc.) and changes to one Directive affect the other.

2.2 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?*

The UK does tend to have a good position in Europe on payments issues, partly because the UK has one of the most mature and advanced payments markets in Europe, and so its views are respected. Although it is true to say that as a non-Euro country we do tend to have a less well-heard voice on some specific euro-payment issues, the UK does still have a 'seat at the table', for example the UK has a strong contribution to SEPA payment issues



via the European Payments Council. We are also often one of the Member States that provides the most input to the Commission on legislative consultations. Broadly speaking, there is currently an opportunity to influence developments through the various bodies, groups, fora, etc in existence (e.g. the European Payments Council), and through the strong stakeholder engagement carried out by HMT.

2.3 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?

Although the EU does have a consultation process in place for legislative action, we feel that this process could be improved. Often it appears that the Commission has already decided on a course of action or made a decision about whether a legislative instrument is needed/what should be regulated before the consultation has concluded and has been assessed. The impression at times is that the views of some stakeholders are taken into account more than others. Given the large impact that legislation can have, the EU legislators must take a genuinely neutral stance and assess the merits of particular actions against universal principles. The EC might consider including stakeholder group meetings as part of its consultative process – in this way it could bring together the relevant representatives from all sides (consumer/supply/demand/vendors) to discuss the issues fairly. These meetings should be open and transparent and should begin from a neutral standpoint. The output from such meetings should be recorded and made available so that all stakeholders can understand the reasoning/drivers behind future legislative measures.

We believe that all new legislation needs to be impact-assessed, not only against the current (unregulated) environment but also against other current and proposed legislative instruments. Often it is not at clear if the legislators have considered this or whether there have been appropriate discussions with other legislators. For example, this is particularly the case with broad pieces of legislation such as the proposed General Data Protection Directive.

In general, we believe the legislative structure needs to support, not hinder, the development of the European economy. The objective should be to create a simplified regulatory structure that is:

- technologically neutral;
- treats similar providers and services equally, as far as possible;
- maintains the integrity of structurally important systems;



- promotes competition;
- maintains the right level of consumer protection.

Furthermore, it is important (especially in the current economic environment) that the EU resists the temptation to take a Europe-centric view on all issues. Trade, ideas and people are increasingly global and the EU should always seek to ensure that new legislation does not hinder businesses from operating and competing fully as global players, and does not discourage trade and business coming to the EU from other countries.

For example, the recent SEPA Regulation (260/2012) was updated (at a very late stage in the drafting process) to include a rule that from 2014 payment service providers (PSPs) could no longer require payers to provide the BIC (business identifier code, which is used to route payments) when sending a SEPA payment. Not only will this change lead to a much greater degree of complexity for making SEPA payments (as information on the correct routing BIC will now need to be accessible in all SEPA countries by all PSPs in order to ensure that customer payments can be sent), but it also means that EU payments are now made differently to those in the rest of the world, where a BIC will still be required when sending a cross-border payment.

