

WMBA Response to HMT Consultation Paper: Balance of Competences review Single Market - Financial Services and the Free Movement of Capital

1. Introduction

The Wholesale Markets Brokers' Association (WMBA) and the London Energy Brokers' Association (LEBA) (jointly referred to in this document as the 'WMBA') are the European industry associations for the wholesale intermediation of Over-the-Counter (OTC) markets in financial, energy, commodity and emissions markets and their traded derivatives. Our members act solely as intermediaries in wholesale financial markets and do not undertake any proprietary trading. As a result they are classified as Limited Activity and Limited Licence firm in respect of the current FCA classifications. Based on the proposed definition in the consultation, WMBA members will not be classified as globally systemic important institutions.

WMBA has been intensely involved across a great many of the financial dossiers tabled in Brussels since 2009 and therefore welcomes the opportunity to respond to the issues raised in this consultation paper on behalf of its members. We have retained consulting services in Brussels over that time and have attempted at all lengths to engage with the EU legislatures in Brussels, ESAs, Central Banks, Finance Ministries and other agencies or supranational bodies. Of these we note that the EU bodies in Brussels are the most difficult to engage and least receptive to industry comment.

We note the paradox that many or most of the Trade Associations operating in the UK in the field of financial services have a great deal to say on these topics and yet are not responding to this consultation purely due to the pressures of the sheer number and amount of legislation and implementations currently live.

2. Key Points

i. ***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 subsidiary? Do they go too far or not far enough?***

They have dominated the work of both of our Associations since late 2008. This comment should also be seen in the context of similar regulatory change in the US and within the UK. Also similar upheavals in traded Energy markets both at the Brussels level with the Third Energy package and IOSCO in respect of oil PRAs.

The UK dominates financial services in the EU and particularly in traded markets that are the key interest of our members and their clients. The length of time it is (has) taken to rollout regulation is a symptom of the UK not leading the process. In this sense subsidiary has not been evident.

Their focus has overly political and indeed been too equity oriented. Moreover they have confused retail with wholesale interests, failing to appreciate or worse, the role of the UK as a global hub for wholesale financial services rather than a supplier of such to EU based consumers. Issues relating to venues, access and third countries illustrate this.

Too much focus has been put on infrastructure changes towards an untested European template, rather than prudential and conduct regulation.

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Too much focus in the wholesale sphere has been placed on products (of which there are infinite), the regulation and classifications thereof; and not nearly enough upon global participants (of which there are few) and their global authorisations.

ii. *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?*

UK financial markets would benefit from greater clarity about national discretion. Local supervisors and regulators make decisions about, e.g., capital, liquidity and risk management.

There is thus a difference between regulations and directives, and how they are implemented.

Evidently there should be much more non-legislative action, especially in wholesale markets where treaties and accords are the only practical way to supervise across regional boundaries as demonstrated amply recently with the difficulties in cross border recognition and the subsidiarity of overseas participants.

There is not a sense of empowerment for the FCA and PRA in this environment.

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

EU rules have hindered because there has been too much regulatory uncertainty and EU processes are too long. The benefits from a access and single rulebook have not been evident since the UK was active in supervision and often super-equivalent. Conversely the damage from disproportionate and inflexible rules based legislation has served simply to increase the cost base to UK financial services.

This factor is not unique to the EU as Dodd Frank regulation in the US has caused as many problems.

The scope of both MiFID2 and CRD IV is far too large as prudential regulatory changes should be coming from Basel and agreed on a global basis. CRD IV should only enable the EU to put the Basel Accord in place.

iii. *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?*

The WMBA thinks that the volume and detail of EU rule-making in financial services have been disproportionate. There has been far too much change for the sake of change itself, or for political posturing, which causes increases in compliance risk and costs. This has been particularly evident in the application of the G20 2009 Pittsburgh accord.

Subsidiary to the FCA and PRA would have brought speedier solutions to UK financial markets. More directives and a narrower scope would have resulted in better outcomes,

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particularly for the UK which had better pre-existing competencies in both financial legislation and prudential conduct supervision.

Harmonisation issues are still being discussed globally and it is therefore too early to say.

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

Third Country access issues are still being discussed and would appear to be either subsidiarised to the member states (MiFID) or left for level 2 (SSR, AIFMD).

However WMBA does note that traded volumes for UK businesses have fallen as uncertainty has dulled activity.

The prime concern of the WMBA in this respect is that an EU of an enlarged single market may be one with higher boundaries and access provisions around the perimeter. In this way the UK would tend to become less globally competitive as it focuses and calibrates to a market with artificial support.

Concepts of strict equivalence that have emanated from Brussels and been placed into Level 2 legislations can only be damaging to a market where the access needs to be as porous as possible not only to ensure profitability, but more-so to foster innovation and competitiveness

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

More but clearer retail regulation would help if it is correctly focused and does not negatively impact wholesale markets.

vi. ***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 impacts of the ESAs are referred to in the above answers. The division of powers and responsibilities for implementation matter most.

It is self evident that life of the ESAs is far too young for substantive comment to be informed. That said, the WMBA notes that to date their infancy has been inauspicious. The stress tests of the EBA have been discredited, banking supervision removed and CRD4 implementation myopic to the banking system with no regard to the large sector of non-bank MiFID investment firms. ESMA similarly has achieved little of note with a dissonance at times with the EU Commission and the AIFMD and SSR forming two of the very worst pieces of legislation that we have seen, not being fully embraced in UK supervision.

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At the core here is likely the fact that secondment to an ESA is not seen as a prime destination for ambitious central bankers, therefore, below the top level of staff the ESAs struggle for competence. We also note anecdotally that national competent authorities in Europe do not report favourably of the process and outcomes of the ESA committees.

More formally the WMBA is disappointed that the transparency and access so far to the ESAs are minimal. This is particularly marked when contrasted to the ongoing implementation of CEA Dodd-Frank Act by the US Agencies.

vii. ***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 has had a minimal level of influence on EU legislation for many years, but that may have been 'appropriate' as it has not appeared as if it wished to.

After 2008 the EU became politicised in a sphere of financial services as the UK became more engaged. Paradoxically from this point, much or most of Europe has adopted a reactionary and reflexive stance against the position of the UK. This has further undermined UK influence in a sector in which it holds all the competencies,

UK hegemony would have emphasised supervisory and prudential regulatory tools, not focused on product regulations, and not have mandated venues. It would also have strengthened Conduct of Business rules. It would have placed outcomes, particularly the maintenance of liquidity in markets as a top priority.

viii. ***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?***

Acceptable results have generally been reached but the politics and processes are too drawn out. Lobbying fatigue has been evident and in dialogues the desire to finish the process means that unsatisfactory compromises are reached or too much is put into level 2, where, as we have established, the ESAs have not been effective.

WMBA has engaged closely and repeatedly with the EU legislatures in Brussels; however the experiences have been dispiriting, particularly compared to parallel work in other Directorates and in Washington. Lower level staffers and secondees tend to listen to industry, often as a consequence of unfamiliarity with the content; but all expert input tends to be ignored at a more senior level because of what would appear to be a much stronger political culture within these bodies. Outcomes have therefore been surprising, slow and impractical.

ix. ***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?***

These have not been noticeable in traded markets as evidenced by business volumes. Changes in capital and liquidity arrangements have had a bigger impact.

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- x. ***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?***

For the UK's activities, particularly in wholesale markets, then it will be the global rule making and cross regional accords, mainly by Basel, IOSCO and the FSB will be seen as more important than EU rule making. This, evidently is because wholesale financial markets and their actors are not confined to Europe, whilst the growth of populations, GDP, markets and opportunity will tend to be in third countries.

Non-membership would result in the establishment by wholesale market firms of subsidiaries in the EU to be passported in to service a very large EU bank client base. This could mean a transfer of activity from London to EU centres, but that would be unlikely given the nodding of capabilities in the UK, increased competitiveness and innovation. Rather, more subsidiarity and globalisation would become a feature of those firms with substantial operations in the UK.

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

Our experience is that the FSA/FCA and HMT have done a very good job and listened to the industry. It may again be a case of, "just enough and just in time".

To date, WMBA member businesses have not been materially and negatively affected by the roll out of EU regulation, but that may be due to the super-equivalence in the UK and the early stage of EU legislations. We do however note that processes have increased costs significantly.

Earlier engagement or greater influence by the UK government would have been helpful to our industry.

Our experience is that the FSA/FCA and HMT have done a very good job and listened to the industry.

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17 January 2014

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