Balance of Competences

Semester III - Financial Services and the Free Movement of Capital

About us

Bank of America is one of the world's largest financial institutions, serving individual consumers, small and medium enterprises and large corporations. In EMEA, Bank of America's principal local activities operate as Bank of America Merrill Lynch, which include Bank of America's global banking and markets businesses and MBNA, one of the UK's largest retail credit card providers. With offices in over 30 cities across EMEA and a regional presence since 1922, we serve the needs of individual, corporate, institutional and government clients, combining the best of local knowledge and global expertise.

As a global financial institution, we are also committed to developing solutions to social and economic challenges. Our responsibility platform focuses on: our business practices; environmental sustainability; local community advancement through education and employability programmes; global leadership development and the promotion of cultural understanding. By harnessing our intellectual capital, sharing knowledge and connecting capital with need, we believe that we can provide opportunities that effect positive change for all.

Why we are based in the UK

London is a key financial centre for Bank of America Merrill Lynch and we have had a London presence for almost 100 years. From London we run not only our UK banking and markets activities but also our broader EMEA operations. We benefit from the cluster effect that all financial services firms in London benefit from, including a deep pool of talent. MBNA is based in Chester, where a number of retail financial services operations are also situated, and exclusively serves the UK market.

We believe that its congregation of international financial businesses provides a clear advantage to the UK, and in particular to London, over potential alternative European locations. The UK also has the benefit of its helpful time zone, given its geographical location between the American and Asian markets. London also naturally converses in the international language of business; English is recognised for having a robust and proven legal system and has a well established regulatory platform.

The Review of the Balance of Competences

As a corporate observer with a sizable presence in the financial services industry in the UK and the rest of the European Union, we are aware of the many and varied debates that are ongoing regarding reform and future governance structures in the EU. This is of particular relevance to our business, given the scrutiny our industry has been under since the financial crisis of 2008. In examining the Balance of Competences, which seeks to understand the meaning of the UK's EU membership in the context of her national interest, it is useful to reflect on the benefits that EU membership endows.

For businesses, the key advantage of the UK's EU membership is unfettered access to the Single Market. The Call for Evidence notes that the EU is the largest conglomerated market of its kind in the world, with a GDP of €12.5 trillion and a population of 500 million. The UK is a significant beneficiary of this, enjoying the largest international capital flows of any country in the world. We recognise that access to the Single Market is critical to our global banking and markets businesses. For our business, the UK's access to the Single Market and the ability to 'passport' into other countries is therefore of paramount importance, and one which has a significant impact on the benefits that accrue not only to our employees but also to the wider economy through salary, tax, insurance and pension payments along with disposable income generation that drives demand.

In terms of specific questions posed by the Review's call for evidence we would like to focus on the following:

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?*

   EU rules on financial services have had a large impact on the development and maturation of the Single Market for financial services across the European Union. Their consequences are of great importance to the City of London.

   Following the financial crisis, we have seen numerous regulatory initiatives; in certain cases we would argue that the balance between costs and benefits might not have been optimal. Therefore, we strongly believe it is important that the UK continues to influence the decision making process in Brussels to ensure that the appropriate balance is struck.

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?*

   It is a matter of fact that we have been faced with a large amount of regulation in the past few years. In terms of harmonisation, the key question is whether all member states have adhered to the same standards, as agreed at an EU-level. The UK has sometimes gone beyond its remit and added legislative weight to EU regulation by the so called 'Goldplating', mostly done by national regulators and supervisors. In our opinion this is a hindrance to the full integration and proper functioning of the Single Market.

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

Global regulatory consistency is key to the well functioning of global financial markets, the avoidance of regulatory arbitrage and the facilitation of effective regulatory oversight. The EU plays a key role in that regard, representing 28 jurisdictions vis-à-vis third countries and in the G20.

We believe that the EU should accept the concepts of equivalence on a principles based approach, recognising each other's' collective regimes in the interest of well functioning global financial markets and thereby ensuring a global level playing field. In this regard, we are confident that the UK can use its influence at EU level to keep the so called third country regime as open and pragmatic as possible. It is in the UK's interests to have open and sound financial markets from which the UK profits as one of the largest financial centres within the global financial services industry .

In practice, many questions surrounding implementation and timing remain, causing difficulties for global banks operating in various jurisdictions; however this is not the fault of one jurisdiction or one approach and any 'blame game' is neither productive nor constructive. The question of international regulatory cooperation between jurisdictions needs to be addressed in the appropriate forum such as the G20, and the European Union has its role to play in defending the interest of the Single Market.

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?*

Given the complexity of the financial services industry, what is most important to us is the creation and operation of clear rules. It is not so much an issue of where the regulatory and supervisory powers lie, but more about ensuring that their holder has the necessary resources to properly fulfil their task, can organize their work effectively and communicate successfully to the wider stakeholder group.

Further, the role of European Supervisory Authorities (ESAs) should be to ensure a level playing field between the 28 jurisdictions. The ESAs ensure that a European approach is kept when regulating the EU markets; in this case we are supportive of the role of the ESAs as a complement to the national approach taken by the competent national supervisory authorities.

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 level of effectiveness and transparency of the EU policy-making process on financial services legislation differs wildly between the three major institutions involved in the EU legislative process, namely the European Commission, the European Parliament and the Council.

In general, it can be said that the process is indeed very complex and sometimes lacks transparency on how decisions are made, especially in the final stage of the negotiations, or “Trialogues” (during which the stakeholders’ engagement is limited to a minimum by policy makers).

The European Commission is, we believe, the most transparent institution; before publishing any proposal it engages in stakeholder dialogue and a consultation phase. The legislative proposals are always accompanied by an Impact Assessment. However, the quality of Impact Assessments could be improved further as it seems that apparently unconvincing evidence is dismissed and/or that policy scenarios are on occasion based on weak assumptions and evidence.

The European Parliament decision making process is mostly transparent, with the publication of draft reports along with amendments. The public exchange of views provides further insight into the line of thinking and reasoning of Members of Parliament.

In the Council, the decision making process is at best opaque and appears to be the least efficient and accountable one. Working level discussions are conducted behind closed doors and no public hearing can be observed, unlike as is the case with the European Parliament. Therefore, the reasoning and thinking of the Council can, at times, involve guess work on the part of other stakeholders.

Further, as the laws proposed by the European Commission are in most cases substantially changed throughout the length of the legislative procedure by the

European Parliament and the Council, the impact on business and society of the altered legislation is not properly assessed at the most appropriate point.

We therefore believe that the decision making process would benefit from a more transparent approach and an independent assessment of any additional proposed changes that arise during the decision making process.

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?*

We believe that London as a financial centre has the highly enviable advantage of being historically the primary conduit for significant financial transactions across the EU, despite the UK not being party to the single currency.

We also believe however that Banking Union, further economic, fiscal and potentially political integration of the Eurozone will fundamentally alter the way the European Union operates. As a result, there is a risk that there could be a potential divergence of interests between the 'ins' and the 'outs' and a consequential potential reduction in the UK's influence or attractiveness for Eurozone business.

In our opinion, it is therefore of fundamental importance that the UK retains its current level of access to the Single Market, as intrinsically embedded as one of the key features of the UK's membership to the EU.