

RESPONSE FROM SCOTTISH FINANCIAL ENTERPRISE TO THE EUROPEAN COMMISSION'S GREEN PAPER ON FINANCIAL SERVICES POLICY (2005 – 2010)

Scotland has a distinguished history in financial services that dates back over 300 years. It is now one of Europe's leading financial centres and the second largest financial hub in the UK next to London. The international financial services industry based in Scotland has a long-held reputation for innovation and excellence, and provides financial products and services to businesses, private and public organisations and individuals across the world.

Scottish Financial Enterprise (SFE) is the independent organisation, formed in 1986, that supports and represents the interests of Scotland's financial services industry. Our members encompass all sectors of the industry including banks and building societies, general insurance, life assurance and pensions, investment managers, asset servicing, corporate finance and broking services, professional advisors and support services.

We have consulted with our member companies on the Green Paper on Financial Services Policy (2005–2010) (the Green Paper), and appreciate this opportunity to provide a collective industry response. (Please note that several of our members are also submitting individual responses and contributing to comments from sector-specific trade groups.)

SFE broadly welcomes and endorses the proposals contained within the Green Paper. We are pleased to note that these address many of the concerns that the industry has raised with the Commission through the ongoing policy consultation process. Our response to the particular questions posed within the Green Paper is as follows:

I Key political orientation

Core objectives

We acknowledge the significant progress that has been made towards creating an integrated European capital and financial services market over the last six years. However, we agree that a new focus is now required to ensure that this objective is met and that it should concentrate on consolidating existing regulation and minimising new initiatives; effective implementation and enforcement of regulation across the European Union; and continuous ex-post monitoring and evaluation.

The core objectives of the Commission's proposed financial services policy over the next five years provide a strong framework that will continue to facilitate progress towards an integrated, open, competitive and economically efficient financial market within the European Union.

The global element

Financial services is a global industry and it is vital that the EU regulatory framework does not in any way disadvantage European financial markets and companies. The regulatory objectives identified within the Green Paper that address this dimension will help to ensure that global competitiveness of the European financial services sector continues to remain a priority.

Focus on consolidation

We warmly welcome the commitment that the Green Paper makes to “better regulation” and its recognition of the importance of open and transparent consultation to help to reduce administrative costs to the industry and increase the industry’s competitiveness. The focus on consolidation of existing legislation rather than introducing new initiatives will provide welcome relief to the industry and a stable platform that will enable businesses to develop within the existing regulatory framework rather than constantly being required to change procedures as new legislation is introduced.

Reduce “gold-plating”

It is generally accepted that there needs to be a focus on reducing the amount of “gold-plating” by individual member states. We welcome the recognition of this in the Green Paper and look forward to the Commission taking demonstrable action to support this policy. An emphasis on building consensus in the preparatory stage of regulatory development will help to ensure that a balance is found between national and European interests.

Challenges

We recognise the challenges identified in the Green Paper, including those concerning retail distribution and clearing and settlement, and agree that these remain priority areas to be addressed.

2 Better regulation, transposition, enforcement and continuous evaluation

Focus on cost benefit analysis and continuous evaluation

We welcome the proposals to simplify and consolidate financial services rules, and support the intention to evaluate existing directives and repeal measures that do not deliver the expected economic benefits. However, in practice, the industry believes that it could, in some instances, be as administratively cumbersome to adapt to repealed directives as to implement new directives. This highlights the importance of undertaking effective cost benefit analysis before imposing regulatory change and subsequently ensuring effective ongoing regulatory impact analysis.

Limitations to repeal

While small parts of individual directives may be candidates for repeal, in general the consultation process has led to directives being implemented that are, on the whole, acceptable and of economic benefit to the European Community. Therefore the potential for repeal of directives introduced through the Financial Services Action Plan is seen to be somewhat limited.

Consolidated EU “financial services rulebook”

Several of our members have strong reservations about the concept of a consolidated EU financial services rulebook if this extends beyond the consolidation of EU-level measures into an alignment of national member state rules and regulations. Arguably it would, in effect, be harmonisation of national rules by the back door, which they would oppose. While harmonisation, in theory, offers the potential attractions of reduced costs, reduced complexity and less inconsistency, experience shows that it can result in a compromise around the lowest common denominator in a way that inhibits flexible and responsive regulation tailored to particular markets.

3 Consolidation of financial services legislation over the 2005 - 2010 period

Less and better targeted regulation

We strongly endorse the Green paper’s emphasis on a “bottom-up” consultative approach, not least as the industry’s experience of the process by which directives are formed has highlighted significant areas for improvement. The Commission has rightly focussed in the Green Paper on the problems associated with “gold-plating”, an issue that is of particular pertinence to the industry. In addition, experience shows that by the time a proposed directive has been revised by all the interested

parties, it frequently ends up looking radically different from the initial document and may no longer address the issues that caused its creation in the first place. Furthermore, the formulation of directives often takes up to three years, during which time the market has little incentive to continue its own projects and market conditions or requirements may have evolved or changed.

Clearing and settlement

With specific regard to the area of post-trade financial services, we feel that there are significant developments happening already in the European clearing and settlement area, particularly with Euroclear now covering 60% of total European market capitalisation. This should, in time, lead to price decreases and improvements in cross border settlement processes without the need for further regulation.

Giovannini barriers

Most of the industry believes it would be productive to put increased public and private sector focus on removing the Giovannini barriers, and on harmonising processes (such as standardising corporate actions activities), while allowing the continuation of market differentials in products and services.

External dimension

We welcome and endorse the recognition of the global nature of the financial services industry. The financial services industry in Scotland operates internationally and, as an example, has particular expertise in fund management in Asia and banking in the United States of America, as well as servicing global clients from the Scottish base. We are pleased that the Commission has made good progress in building dialogues with the US and China, and look forward to seeing it deepen financial relations with other countries such as India in the coming five year period.

4 Possible, targeted new initiatives

Asset management and retail financial services

The industry looks forward to responding to the Green Paper on the enhancement of the EU framework for investment funds. Equally, we agree that the facilitation of the provision of retail financial services in Europe is a key initiative.

Consumer financial literacy

We note that European legislation emphasises the importance of information provision to consumers and agree that without an understanding of the product choices available and their relevance, consumers cannot make well-informed decisions. Many of our members are actively involved in initiatives within the UK to improve levels of consumer financial literacy. We suggest that member states should be encouraged to focus on consumer education but that this is not an area that requires regulation.

The 26th regime

Another initiative proposed in the Green Paper that impacts on retail financial services is that of the feasibility study into the “26th regime” (mooted by the European Financial Services Roundtable as an alternative regulatory regime to sit alongside existing regimes for cross-border products). Although this has been put forward as a constructive alternative to attempting to harmonise individual country legislation, we believe that there are likely to be significant difficulties in implementing such a scheme and more, not less, regulation may be the result.

Financial mediation

Lastly, the Green Paper cites financial mediation as an area for possible future action, stating that the need for further alignment of rules on conduct of business, sales advice and disclosure should be examined. In the light of recent depolarisation and other legislation such as the Investment Management Directive, any further legislation in this area would not be welcome.

5 Further comment and information

Scottish Financial Enterprise would be very pleased to provide further comment on any of the issues we raise in this response and we look forward to continuing to engage with the Commission. Please contact:

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