



Making the Financial Single Market Work

Priorities after the Financial Services Action
Plan

**the Association of
Private Client Investment Managers
and Stockbrokers**

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About APCIMS

The Association of Private Client Investment Managers and Stockbrokers (APCIMS) has some 220 members including all the private client stockbroking firms and the overwhelming majority of investment management firms serving private investors in the UK. Our members provide full financial services tailored to their clients' needs, whether it be producing a full financial plan and designing an investment strategy or simply executing trades on their clients' behalf. Clients range from higher-rate taxpayers to any one of the 12 million men and women who hold shares directly or via a PEP or ISA. APCIMS member firms manage around £240 billion on behalf of their clients.

Introduction

APCIMS believes a genuine single market for investment would bring significant benefits for Europe's investors, but in order for it to succeed it is imperative that consumers feel confident that they can trade across borders economically, effectively and with a clear process of redress if anything goes wrong. The Financial Services Action Plan (FSAP) seeks to create this single market by 2006. We believe the priorities set out in this document can contribute to the successful completion of this process.

The following are the priorities APCIMS has identified for the future development of an EU single market in financial services:

- implementing the existing Directives and CESR rules equally across the EU;
- improving investment protection through a universal ombudsman service and requiring investment advisors to be suitably qualified (as is already the case in the UK);
- modifying further the Risk-Based Capital Directive proposals to separate the non-banks from the banks;
- coordinating the various clearing and settlement systems.

We also propose that the importance of financial services warrants its own directorate of the EU Commission.

The six priorities

The FSAP was a UK initiative of the late 1990s and, if the current timetable is kept, it should be completed during the next UK presidency of the EU in 2005. However we believe it is highly unlikely that all of the legislation will have been finished in this timescale. Some pieces may either have fallen or will remain outstanding (without political agreement). A strategy is therefore necessary for deciding what course of action needs to be taken on outstanding pieces of legislation, what compromises may be worth seeking, what, if any, new legislation is required and how remaining problems should be tackled.

1. Implementing the Financial Services Action Plan

We are not alone in believing that more attention needs to be given to the implementation and enforcement process. The EU Commission is turning its attention to these areas but requires hard evidence on which to take action. A firm may well not wish to supply the Commission with details of alleged infringements of FSAP rules by one country: its name would be in the public domain and so this could well be prejudicial to its business. Instead we would propose that trade associations and/or home state regulators should act as the first stage of complaint for a firm which has found barriers still to be present, or where additional or different requirements are being applied to trading in one country compared to another. This gives the opportunity for a complaint to be at least partially investigated and corroborating evidence provided before passing the matter to the Commission, as well as keeping the complaint anonymous as far as the firm is concerned.

In addition, the Commission needs to develop several options for ensuring that there is common application across member states. At present it can either request that a state modify its application of directives and CESR rules, or it can opt for the full infraction procedure. Clearly this is insufficient and therefore a high priority needs to be given to developing a phased enforcement process.

2. Directive on Risk-Based Capital Requirements

One of the key pieces of legislation which will remain incomplete for some time is the new Capital Adequacy Directive, now known as the Directive on Risk-Based Capital Requirements. Applying it not only to credit institutions but also to investment firms (a term which includes stockbroking, corporate advice and personal/financial advice) is resulting in a complex and lengthy process and that inevitably will have a significant impact on the financial services industry. We remain seriously concerned that, as it has been drawn up for banks (with the stated intention of putting into EU law the Basel II requirements designed for internationally active banks) it is inappropriate to apply it to other types of firms. It needs to be modified and tailored radically in order to ensure that there is a proper differential in place, recognising the different types of firms which it covers. It will be unduly harsh in terms of the amount of capital required of investment firms unless such changes are made. Further work in this area must be a high priority for future presidencies.

3. Clearing and Settlement

Consideration is being given by a number of organisations and entities to the issues of EU clearing and settlement, most notably through Giovannini, the G30 Group, IOSCO (the International Organisation of Securities Commissions) and the ECB/CESR (European Central Bank and Committee of European Securities Regulators). The implementing authority for any proposals within Europe is the Commission. While some believe that there should be a directive, the case for this has yet to be made, especially as any directive will directly impact on many of those firms already subject to FSAP changes. There are some other actions that can be taken which would achieve much and which would bring significant benefits in terms of reduction of costs, but without the complexity and time requirement of a directive. These include the use of common standards (such as the FIX protocol and ISO 15022) and through using the competition authority of the Commission to

require open access to settlement systems at a reasonable price. Such work, whilst not having the high profile of a directive, could be invaluable from the perspective of reducing the costs of cross border clearing and settlement to the practitioner.

4. Investor Protection

a) Access to an ombudsman

We believe it to be a significant shame that despite Directive 97/9 on investor compensation schemes, there continues to be an absence of effective redress arrangements for many EU citizens. For example, where countries have set up an ombudsman service they are not necessarily comprehensive; outside the UK we understand that few other countries (if any) require their firms to tell all their clients how to complain; and some countries do not offer easy access for the consumer to their own ombudsmen. In protecting consumers (which has been, and continues to be, a key driver of the FSAP) an easy ability to complain and get recompense where it is deserved, both within a country and cross-border, is an essential requirement.

We congratulate FIN-NET on its progress to date but it does not have complete coverage of the industry. For example in Austria banking is covered but not securities, in Italy banking and insurance are covered but not securities and in Spain the service is confined to a very general one. It should be a fundamental requirement for all member states to ensure their citizens have adequate consumer protections through a low-cost redress mechanism. We note the good work being carried out by EU Commission officials in this regard, but believe much more political will is needed to require member states to have effective redress schemes.

b) Professional qualifications

At present a number of EU countries do not require all investment advisers to have qualifications. In addition, in some countries there is no such entity as an independent investment adviser - the only advice investors can receive comes from individuals employed by banks and is only on the products sold by that bank.

If investors are to be protected, the availability of independent financial advice is desirable, but it is vital to ensure that those employed in the industry are properly qualified. The plethora of qualifications for the financial services industry in the UK is currently being streamlined and indeed it is an existing requirement for all individuals who carry out "controlled functions" to have an appropriate qualification. We expect this to be extended to all authorised persons in due course. Meanwhile we believe that, at the very least, all those who give financial advice to individuals in the EU should have reached a set of minimum knowledge standards as judged by their home state regulator.

A good start would be a mechanism for mutual recognition of the prime qualification in member states to facilitate at least the movement of qualified staff across borders. There is no guidance yet in this area and recognition / acceptance of qualifications is only undertaken on an ad hoc basis.

5. A Separate Directorate for Financial Services

At present financial services come within DG Internal Market in the EU Commission. Yet we believe that the size and importance of this industry to the EU - combined with its complexity - means that it would be better served by its own directorate. This would also ensure that all proposals which impact on financial services would be channelled through one single directorate (rather than the current situation of, for example, the Duty to Trade Fairly proposals which impact on financial services but are proceeding through another directorate). We urge that a separate directorate for financial services be considered and established by early 2005.

There are likely to be further changes to financial services in the EU post-FSAP, for example with the International Accountancy Standards. This underpins the importance of having the necessary expertise and specialism within the European Commission.

Conclusions

There are clear imperatives for further work following the completion of the FSAP. Many of the proposals that we have seen for this are based on tax harmonisation or fundamental legal changes, both of which are clearly complex and unlikely to be achieved easily or quickly. In addition, a further FSAP of some form directed solely at establishing a cross-border retail market we do not consider as being required at this stage as, firstly, some of the current directives address retail issues such as common conduct of business standards; secondly, tax and cultural issues are at the core of retail investors' desire to stay local; thirdly, it is necessary to address the consumer protection issues set out in this paper; and fourthly it would result in further change before the FSAP has had time to bed down.

Our view therefore is that the next stage priorities are:

- universal implementation of agreed directives and rules, with a more extensive set of options for the Commission to ensure that states comply and an anonymous process for infringement complaints from firms;
- improved investor protection through the establishment of a comprehensive ombudsman service in each EU country, with an easy route for cross-border claims;
- a requirement for all investment advisers to be suitably qualified and for independent financial advice to be available in each country, further improving investor protection;

- improved differentiation within the Risk-Based Capital Directive for the various types of businesses operating in the different countries;
- adoption of at least agreed standards, principles, definitions, access and charging structures for a clearing and settlement system; and
- a separate Financial Services Directorate established in the European Commission which will also have responsibility for the allied areas of introducing international accounting standards and corporate governance codes.