

THE FINANCIAL SERVICES ACTION PLAN: TWO YEARS ON – ACHIEVEMENTS AND PROSPECTS

Summary:

The introduction to the Financial Services Action Plan (FSAP) acknowledges that the single market for financial services has been under construction since 1973. However segmentation into national markets remains and in recognition of this the Cardiff Council asked the Commission to produce a Plan to address the problems. The FSAP was the Commission's response highlighting five main areas for action: improved legislative apparatus, elimination of capital market fragmentation, consumer protection within a single market, supervisory co-ordination and an integrated infrastructure to underpin financial transactions.

After two years much work has been done and it is anticipated that the next review, due shortly, will show that 15 of the 42 original initiatives have been completed and that 8 more will be completed shortly. The majority of these initiatives involve the issuing of Communications by the Commission rather than the finalisation of new or amending legislation.

The weight of activity does now look set to move away from the Commission to Parliament and Council. There have been high level statements of political endorsement at Council meetings but these sentiments have, up till now, run into obstacles in Council working groups.

The original Plan did set priorities and a general timeframe. More recently specific actions to be taken in the forthcoming period have been highlighted. However, the lack of a systematic step by step plan of exactly what is needed to be achieved by when if the overall objective was to be met has made it difficult to accurately track progress.

By any measure there remains much to be done and some have said that "without profound change ... there is no chance whatsoever (that it) will be delivered on time". Additionally to date there has been an emphasis on the timing of issues rather than also considering the quantity of the proposals being put forward and whether they will actually deliver the genuine single market which is desired.

The ambitions of the Plan, a single market for financial services, represent an opportunity for suppliers and users alike. For those ambitions to be realised, in the timeframe envisaged, will require hard work and co-operation on all sides.

Background

The European Council meeting at Cardiff in June 1998 issued an invitation to the Commission to prepare a "Framework for Action" for financial services. "To improve the single market for financial services" by, in particular, examining the effectiveness of implementation of current legislation and to identify where amending legislation might be necessary.

In response to this the Commission produced its "Building a Framework for Action" Communication in October 1998 (Com(1998)625) which concentrated on the following main aspects:

- “deep and liquid European capital markets which serve both issuers and investors better
- removal of remaining barriers to cross-border provision of retail financial services to produce greater consumer choice whilst maintaining consumer confidence and a high level of consumer protection.”

It also highlighted the need for:

- a “clearer, more modern regulatory apparatus” and called on Council and Parliament to deliver “a more streamlined, flexible and faster legislative approach.”
- Supervisory co-operation
- Integrated EU infrastructure.

With a view to ensuring that momentum was not lost the Financial Services Policy Group made up of the personal representatives of Finance Ministers and chaired by the Commission was incepted. Up until February this year the FSPG has met nine times to review and promote progress.

The Vienna Council in December 1998 considered that a concrete and urgent work plan should be created. Following three meetings of the FSPG aimed at selecting priorities for action, the Commission produced its Financial Services Action Plan (FSAP) Communication on 11th May, 1999 [Com(1999)232] based extensively on that work. This encompassed a mixture of proposed new legislation, amending legislation, Commission Communications and Recommendations all within an ‘Optimal Timeframe’ for completion by 2005.

Objectives and Priorities

The aim of the FSAP Communication was to confirm general objectives, assign priorities and timelines and identify mechanisms which might help with progress.

It also highlighted areas where ‘protracted political deadlock’ had delayed progress [winding up, take-over bids, European Company Statute, UCITS, Distance Marketing of Financial Services].

In terms of objectives three main and one subsidiary areas were identified. Wholesale markets where the prize is cheaper, more flexible financing arrangements for corporates where the ‘present mass of barriers needs to be stripped away’. Retail markets ‘rather than attempting harmonisation of products, mutual recognition ... should be pursued’ with ‘progressive harmonisation of marketing and information rules’. Supervisory structures ‘market integration has pushed the issue of reinforced EU collaboration to the forefront’ and the highest standards of prudential regulation need to be maintained. General conditions for an efficient EU financial market such as Corporate Governance and Taxation.

In terms of setting priorities a three tier approach was adopted. *Priority 1* where there was broad agreement that urgent action was required and that the measures are crucial, *Priority 2* where the issue is important but not crucial and can be achieved by amending existing

legislation or structures and *Priority 3* where the issue is important but not crucial and will require new work to be accepted.

The FSAP included a section on 'Optimal Timeframes', however, the level of detail was low with predominantly only start and finish timings. There was a lack of detail on by when intermediate steps would have to be accomplished in order to meet the optimal timeframe's finish deadline.

Whilst not referred to specifically in the text the desire to achieve an 'early harvest' was apparent at the time. It was hoped that the finalising of some measures early in the process would give impetus to the delivery of the rest of the Plan.

The Plan was endorsed at the Cologne European Council in June 1999.

Subsequent Developments

There have been three progress reports published (29/11/99, 31/5/00 and 8/11/00) by the Commission so far with the fourth expected shortly. The first (Com(1999) ?) concentrated on reporting which mechanisms and structures (e.g. creation of Forum Groups) had been put in place to take matters forward. It noted that modest progress had been made in terms of implementing the Plan but that there was a need for greater effort. In particular the need for clear, political commitment was highlighted with examples given of where this was lacking in Council (take-over bids, winding-up and European Company Statute). The annex showed in a simple format whether actions had been completed (*), where some progress had been made (+) (though there was no indication of how much slippage had occurred) and where progress was disappointing (-). No obvious attempt was made to show specifically how good progress was against priority 1 items. The visual impression was, however, positive.

The second report (Com(2000)336) was issued a year ago and followed the Lisbon Council meeting of March 2000. The Lisbon Council asked that the Action Plan should be completed by 2005 and also set a number of near term priorities (access to investment capital, single passport for issuers and review of ISD, pension fund and UCITS investment parameters, government bond markets (repos) and cross-border collaterals comparability of financial statements, co-operation of regulators, particularly relating to conglomerates, take-over bids and winding-up) which demonstrated a shift towards wholesale markets.

The conclusions of the report were again that progress had been made but that there was a need for greater effort. Again, the visual presentation of progress gave a positive impression.

The third progress report (Com(2000)692) was published in November last year. The conclusion here was that progress remains satisfactory but that there are important qualifications and that a 'quantum leap' will be needed to achieve the 2005 deadline.

The report highlights the need for there to be no slippage in bringing forward initiatives and that progress will need to be rapid in agreeing and implementing proposals, particularly those which have only just come forward or are about to. At the behest of EcoFin Ministers it also went some way towards producing a Gantt chart which by recording clear deadlines for the achievement of specific tasks and showing steps taken towards their attainment, provides a

useful visual means of monitoring overall progress. This detail was missing from the original Plan.

One new development which the Commission notes should help in terms of ensuring that there are no bottlenecks or delays in progressing legislative initiatives is the creation of the 2005 Group. This informal group is attended by the Chair of EMAC, representatives of the present and incoming presidencies and the Commissioner in charge of financial services.

It is anticipated that a fourth report will be produced ahead of the (EcoFin Council on 5 June 2001) and that this will show that by the Summer 23 of the original 42 action points will have been achieved. It will also, probably, highlight that the Commission has for the time being played its part with the emphasis shifting to Council and Parliament.

Lamfalussy Wise Men's Group

The Lamfalussy initiative examined the securities market and its regulation in the EU and its proposals suggest a way of quickening the pace of regulation in this sphere. The report was unequivocal in stating that "We all agree that unless there is profound change and reform there is no chance whatsoever that the Financial Services Action Plan will be delivered on time."

The Wise Men's Report concludes that if the new regulatory structure it proposes is in place by the beginning of 2002 then a full review should be conducted in 2004 by when the main priorities of the FSAP should have been successfully negotiated. There will also be intermediate reviews.

Quality v Quantity

The method of assessment used in the three Progress Reports to date has concentrated on whether or not a particular action has been accomplished. Whilst this is clearly an important criterion it is not the only one. For the Action Plan to deliver on its promise it will be essential not only to have legislation in place but for that legislation to further the aim of market integration by eliminating existing impediments rather than the legitimisation of existing impediments. In other words we need good legislation not just any legislation.

A number of issues give rise to concern, including:

- ***E-Commerce:*** country of origin of the service provider is the legal basis – subject to derogations which will be reviewed by the Commission on a case by case basis: it is essential that the utmost rigour is exercised by the Commission to ensure that any derogations are strictly necessary for consumer protection reasons and are not being used for market protectionist ends.
- ***Distance Marketing of Consumer Financial Services:*** where a divergence of views amongst Member States in terms of the approach to be adopted has caused delay in progress.
- ***Pension Funds:*** the Commission's proposal is intended to ensure high standards of supervision while facilitating cross-border pension fund management and wider portfolio

selection; however, it is not currently clear whether enough Member States favour these proposals.

- **UCITS:** the proposal will extend the range of assets in which a UCITS may invest but a second proposal legitimises host country control over conduct of business rules, reporting and advertising and the form of UCITS which may operate within its territory; as such it contradicts the principle of mutual recognition.

More generally, 23 measures proposed by the Commission await adoption.

There is always a danger that legislative instruments may not have the desired effect. However, that danger might be increased if the flow of work between the legislative bodies becomes congested. In such circumstances there might be a temptation for one body or another to pay more attention to deadlines than to quality. The other bodies would then need to spend longer on a piece of legislation to ensure that it achieves the desired objective than they might otherwise have had to.

Political Will

The Commission has recently published its second Annual Review of the Internal Market Strategy which shows that only slow progress is being made towards the achievement of the objective of the Cardiff and Vienna Councils and highlights the gap between the rhetoric of European Summits and reality.

The emphasis in terms of work load is shifting away from the Commission and on to the Council and Parliament. As the legislative process continues all three entities will have to remain focused on the objectives of the Plan if it is to be achieved.

Additionally, the Plan was conceived as a whole. We are not being presented with an a la carte menu from which to choose those items that are particularly appealing. It will not be possible to achieve its objectives if only parts of the Plan are put into effect. The single market objective can only be truly achieved once the last barrier is removed.

Conclusion

Much work has been done but far more remains to be done. There are clear challenges and some possible solutions in terms of the capacity of the current legislative process to deliver the volume of initiatives within the timetable set. There are also question marks over the extent to which all parties are wedded to the achievement of all the individual parts of the Plan and, therefore, its ultimate success. Additionally, the quality and effectiveness of proposals in terms of achieving the objectives remains to be tested.

More recently have there been signs of an 'end-to-end' management of the process and further development of this approach may prove useful.

There must be a hope that if there is a political will on all sides to deliver on the Plan then its objectives are still attainable. Without such a commonly held will then those hopes will come to nought.

Briefing notes are prepared by the Industry Advisory Committee to the European Parliamentary Financial Services Forum. For further information on the subjects raised in the briefs please contact the Chairman, Members or Secretariat of the Advisory Committee.

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