



Comments on behalf of The Association of Corporate Treasurers on:

Green Paper on Financial Services Policy (2005 – 2010)

A consultation by the European Commission, May 2005

The Association of Corporate Treasurers (ACT) welcomes the publishing of the Green Paper and strongly supports the overall policy objects as stated. The key policy objectives stated of

- consolidating progress towards an integrated, open and economically efficient European financial market and
- fostering a market where financial services and capital can circulate freely at the lowest possible cost and
- implementing enforcing and continuously enforcing the existing legislative framework and applying better regulation

are laudable aims. Our members work in the treasury departments of corporations which stand to benefit from the first two mentioned above and likewise will feel the consequences of regulation and legislation. The better regulation framework will be of particular interest and importance to the ACT and its members.

Details about the ACT are included at the end of this document, along with contact details. The comments in this response are on the record and may be freely quoted.

1 Key political orientation

We agree that there have been a huge number of initiatives towards an integrated market over the last 6 years largely taking the form of Directives and Regulation. However if these are really to achieve their aims then it is essential that the interpretation of these legislative moves and the uniform application of the rules be encouraged and enforced. We agree that this should be the focus for the next period and that the need for new initiatives is more limited now.

Legislation has been a mechanism whereby changes and improved standards can be introduced relatively quickly since they are ultimately compulsory and can be enforced. With the essential framework now in place it may be that during the next phase the approach can change to one of consensus and encouragement for the markets to evolve and enforce market led initiatives to improve or refine standards and behaviours. The concept of market codes of conduct and enforcement through market pressures assisted by a comply or explain requirement provides an alternative model for raising standards and creating an integrated market in a way that allows much more flexibility. If the

relevant code or behaviour is regarded as important by the market those complying will be rewarded with commercial successes, while if the code is not deemed important it will fade into disuse and effectively repeal itself.

Your report states that a well functioning risk capital market is strategically important but that within Europe it is at present much less effective than in the US and hence you attach importance to identifying priorities for further initiatives in this area. If it is truly important then we would expect the demand to generate the supply; in other words normal market forces should be sufficient. The role of the Commission here could be to assess whether inhibitors for the effectiveness of market forces exist and if they exist to focus primarily on those inhibitors.

Notwithstanding the concept of 'better regulation' we believe there should be a move away from automatically thinking of regulation as a solution. Far rather regulation should be a matter of last resort to be used where there is evidence of an actual or potential market failure or in quasi-monopoly areas where competition is insufficient. Where Regulation is to be applied there should be a bias towards light touch regulation and principles based regulation, with in most cases a 'comply or explain regime'.

Following this principle we agree with the need to avoid Member States introducing additional regulatory layers or 'gold plating', except where there is a clear benefit in good regulation and open orderly markets.

We agree with your statement:

“As before, there must be an evidence-based expectation that any new European proposal for financial services legislation and implementing rules will yield significant economic benefits in terms of efficiency and stability. A yardstick should be the extent to which measures facilitate cross-border business and enhance the competitiveness of Europe's financial markets, while, at the same time, protecting internal stability.”

However, another criterion – that the financial markets are open, honest, transparent and competitive would also be useful. These are essential tests to be applied.

The paper includes the goal of supervisory convergence. Having introduced an extensive suite of financial services regulation it is clearly important to ensure that it is interpreted and enforced in a consistent manner, and therefore a degree of supervisory convergence and co-operation is important. However there are many benefits from having a regulator based in one's home market and with familiarity with local conditions which make the relationship between the regulator and the regulated firms that much smoother. We would not wish to see this objective of supervisory convergence leading to a centralised European 'super regulator'

The Commission is requesting that market participants play a role in monitoring market behaviours. The ACT is happy to cooperate in signaling infringements and anti competitive behaviour, and through its wide membership is in a good position to do this

from the perspective of business users of the markets rather than from the financial services sector itself.

Global standard setters such as the IASB and IOSCO are of growing political importance and therefore we agree that there should be some sort of oversight of these bodies. However if the intent is that Europe in some way can dictate to these bodies or is minded to sideline them, then we believe that that would be a retrograde move. The key is that European voices are heard alongside others, not that Europe is able to dictate to the world. The fact that these bodies are independent from the European Commission means that they can take a wider perspective and because of their unbiased position are theoretically better placed to encourage uniform practices across the globe.

Larger European companies and institutions are important actors on the world stage. Accordingly, it is good to deepen overseas relations and to be seen to be a co-operative member of the international financial community. At the same time we should vigorously reject proposals that may be materially to the detriment of Europe.

Overall the ACT strongly supports the key policy objectives and the general orientation described in the Green Paper.

2 Better Regulation, Transposition, Enforcement and continuous Evaluation

The ACT also is able to support fully all the priorities listed covering as they do the theme of consistent application of existing legislation combined with an aim of simplification, and even the repeal of ineffective regulation.

Each element of the Financial Services Action Plan had some sort of justification. Although we do not agree with the form and scope of all the FSAP directives we accept the Commission perceived a need. However when all the measures are put together the extent and complexity of the rules makes us think that there must be a better way of achieving the same overall objective for the European financial markets. We believe there is definitely scope for simplifying and tidying up all the rules, in particular in seeking out those areas where the rules almost overlap but do not do so properly. Definitions could for example be more consistent between directives, and there may be areas where the reporting required by regulated firms to the different regulators could be streamlined.

There is a suggestion that a single Financial Services Rulebook be considered. The ACT is opposed to any such Rulebook if the intention is to consolidate and replace diverse national market rules and practices that should continue to exist within the framework of the EU's financial services policy. As explained above we value the local flexibility operating within a well defined European framework.

We therefore particularly welcome the priority of simplification of financial services rules.

Given that corporate treasurers are users of a multitude of financial services and given the size of their operations they generally depend on automated processes for their operations. As a result, several of the regulations will have an impact on treasury organisations and their infrastructures. This means that many regulations will require investments in organisational change, process change and systems by users of financial services in addition to the investments to be made by providers of these services. Corporates will focus primarily on the business case for such changes, making it essential to have a dialogue about operational implications of the regulations for these corporate users of financial services. Where processes are interlinked, proper design of such processes and alignment in their implementation will be essential.

Consideration should also be given to achieving co-ordination within Europe by non-legislative means. For example, banking capital adequacy convergence and implementation of Basel Accord could be achieved by national banking regulators simply applying Basel without a legislative requirement to do so. Legislation would be desirable possibly only if material distortions were introduced by a potential Member State, but be a measure of last resort.

It can be observed that whereas the European Commission has taken a lead in developing Europe-wide regulations, most industry associations are still organised at a national level. Such industry associations can be an effective voice of the interests of the 20 million businesses and 450 million citizens in Europe that make use of financial services. We encourage a dialogue of the European Commission with existing industry associations to help the establishment of an effective representation of such associations at a European level. A good example of such an initiative has been the establishment of the FIN-USE Expert Forum of Financial Service Users.

3 Consolidation of Financial Services Legislation over the 2005-2010 period

3.1 Finish remaining measures

The measures on clearing and settlement and on insurance solvency are only relevant for a subset of our members who, for instance, are active in the issuance of and investment in bonds, Medium Term Notes and Commercial Paper. The proposals on payments certainly will be directly relevant for all our members. The target timetables being set for SEPA are quite challenging, but this is the sort of project that will need some driving from the Commission and the ECB in order to improve an essential aspect of the financial infrastructure. Such pro-active drive will be needed to ensure open and effective markets, given the network effects around payment services and the link of cash management services by banks to the credit relationship between corporates and their

banks. In the end this will be beneficial overall, although for individual payment service providers will involve extra initial costs for implementation.

We agree that impact assessments should be carefully performed and as stated that there should be wide stakeholder consultations. The payment service providers are a small and reasonably coherent group whose voice will definitely be heard at the Commission. The payment users are an equally important constituency but one that is widely dispersed and does not naturally have a single co-ordinated voice that can be heard at the Commission. It is important that the users' voices are heard and due recognition given to their needs. In this respect we are pleased that the European Associations of Corporate Treasurers (EACT) is engaged in a good dialogue with the Commission and the ECB and we support their input to you.

The Green Paper uses the case of the review of credit rating agencies as an example of an area where regulation was deemed unnecessary. We agreed with this stance. At the same time we agree that it is right to continue to monitor areas such as this to ensure that there is no market failure or anticompetitive position building up. The ACT will canvas to views of its members as a means of contributing to this sort of market review to you.

3.2 Efficient and effective supervision

No comment

3.3 Enabling cross border investment and competition

No comment

3.4 The external dimension

The Paper is right to recognise that there is a global dimension to the financial markets and that therefore creating a good dialogue and appropriate regulatory convergence will help European companies to benefit easily from those world markets, and facilitate their fund raising and so lower their cost of capital. That said there is also a competitive element in the markets themselves. If the European home markets are recognised as flexible but yet safe and robust markets in which to invest and to raise funding it will help European Companies in their own capital raising and again lower their cost of capital.

Taking the case of good corporate governance we see that London is seen as a world leader in setting good standards which through the comply or explain approach avoids the excesses of the US Sarbanes-Oxley Act. This should be seen by Europe as an example of how over regulation or regulation without a proper cost benefit analysis is detrimental to the market and the users of that market and the wider economy as a whole.

4 Possible, targeted new initiatives

We have no specific comments on the areas of asset management and retail financial services.

The concept of a 26th regime is an interesting one since there are often good reasons to leave the domestic rules of each Member State untouched, if only because of familiarity and costs of change, but if it is possible to provide an overarching regime across borders for use by those contracting across borders or domestic firms which see benefit in it, then there could be many advantages. We support the idea of further research and consultation on this.

You identify the following areas for possible future action

- Codification and simplification of existing rules
- Financial mediation
- Bank accounts

We have mentioned our support for simplification earlier in this response. However care will need to be exercised so that in simplifying and standardising information requirements the rules are not materially changed and accidentally made more stringent.

Financial mediation across borders by knowledgeable and reliable intermediaries could be looked into and if improvements can be made through alignment of national codes of conduct this could be superior to yet more regulation.

On bank accounts, portability and transferability could be improved and an investigation by the Commission may be sufficient to provide the trigger for the industry to create improvements of its own volition. As treasurers our members are heavy users of bank accounts and could benefit from portability and ease of operation, however this is an area where market pressures from customers should be sufficient to create the changes that the customers want, without heavy handed regulation as long as inhibitors for the functioning of open markets are dealt with.

The Association of Corporate Treasurers (ACT)

A not-for-profit individual membership organisation established in the UK in 1979, The Association of Corporate Treasurers (ACT) is a centre of excellence for professionals in treasury, risk and corporate finance operating in the international marketplace. It has over 3,500 members from both the corporate and financial sectors, and its membership, working in companies of all sizes, includes representatives from 95 of the FTSE 100 companies.

The ACT has 1,500 students in more than 40 countries. Its examinations are recognised by both practitioners and bankers as the global standard setters for treasury education and it is the leading provider of professional treasury education. The ACT promotes study and best practice in finance and treasury management. It represents the interests of non-financial sector corporations in financial markets to governments, regulators, standards setters and trade bodies.

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