FINANCIAL SERVICES POLICY

Financial services form an essential part of the EU's efforts to complete the internal market, under the free movement of services and capital. Progress towards integration has come in phases, which can be divided as follows: (1) removal of national entry barriers (1957-1973); (2) harmonisation of national laws and policies (1973-1983); (3) completion of the internal market (1983-1992); (4) creation of the single currency area and pre-crisis period (1999-2007); and (5) post-crisis reform (from 2007). The withdrawal of the United Kingdom from the EU brings a new set of challenges with potential implications for the financial services sector within the EU and beyond.

LEGAL BASIS

For the most part, Articles 49 (freedom of establishment), 56 (freedom to provide services), 63 (free movement of capital) and 114 (approximation of laws for the establishment and functioning of the internal market) of the Treaty on the Functioning of the European Union (TFEU) form the legal basis for directives and regulations dealing with financial services;

MILESTONES ON THE ROAD TOWARDS AN INTEGRATED EU FINANCIAL MARKET

A. Early efforts at removing barriers to entry

Early efforts to integrate the Member States' financial systems were based on the principles of freedom of establishment and freedom to provide services, with coordination of legislation and policies where necessary.

The Treaty of Rome, signed in 1957, created the common market, abolishing obstacles to freedom of movement for persons, services and capital between Member States. Article 61(2) stated that 'The liberalisation of banking and insurance services connected with movements of capital shall be effected in step with the progressive liberalisation of movement of capital.' Article 63 gave a mandate to the Council to draw up a programme for the abolition of existing restrictions preventing such a liberalisation.

The Council did so in 1962, when it adopted general programmes for the abolition of restrictions on freedom to provide services and freedom of establishment. In order to implement these programmes, the Council adopted a number of directives in the areas of insurance and banking between 1964 and 1973.

B. Harmonisation of national laws and policies

The process of harmonisation of Member States' laws, regulations and administrative provisions started with, most notably, Council directives in 1973 (First Non-Life Insurance Directive (73/239/EEC))[1], 1977 (First Banking Directive (77/780/EEC))[2] and 1979 (First Life Insurance Directive (79/267/EEC))[3].

C. Completion of the internal market

In June 1985, the Commission published a White Paper[4] spelling out a clear programme and timetable for the completion of the internal market by the end of 1992. It included a specific section on financial services (paragraphs 101-107), which begins: 'The liberalisation of financial services, linked to that of capital movements, will represent a major step towards Community financial integration and the widening of the internal market.' The proposed harmonisation was based on the principles of a 'single banking licence', 'mutual recognition' and 'home country control'. The 1987 Single European Act introduced the goal set out in the 1985 White Paper into primary EU law.

D. Creation of the single currency area

In May 1999, the Commission published the Financial Services Action Plan (FSAP)[5], driven by the introduction of the euro and the impetus it gave to address the remaining segmentation of EU financial markets. The FSAP included 42 legislative and non-legislative measures to be completed by 2004.

In July 2000, the Economic and Financial Affairs Council (ECOFIN) set up the Committee of Wise Men on the Regulation of European Securities Markets, led by Alexandre Lamfalussy. The committee's final report[6], published in February 2001, gave a diagnosis of the current state of the EU financial market and provided a number of recommendations. The major problem was identified as residing in the EU's institutional framework, which was deemed 'too slow, too rigid, complex and ill-adapted to the pace of global financial market change'. The report proposed what later became known as the 'Lamfalussy process', a four-level legislative approach first used only for securities legislation but later expanded to other areas of financial services legislation.

The FSAP was largely completed by the 2004 deadline, with 39 of the 42 measures adopted, some even going beyond what had initially been envisaged. Two measures followed in 2005, leaving only the 14th Company Law Directive on the cross-border transfer of company seats remaining.

E. Post-crisis reform

The period prior to 2007 was characterised by increasing integration and interdependence of financial markets, not only within the EU but also globally. This came to an abrupt halt with the outbreak of the global financial crisis in 2007-2008 and

[1]OJ L 228, 16.8.1973, p. 3.
[2]OJ L 322, 17.12.1977, p. 30.
[3]OJ L 63, 13.3.1979, p. 1.
[4]White Paper from the Commission to the European Council, *Completing the Internal Market,* 14 June 1985.
[5]Communication from the Commission, *Implementing the Framework for Financial Markets: Action Plan*, 11 May 1999. http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51999DC0232&from=EN
[6]*Final Report of the Committee of Wise Men on the Regulation of European Securities Markets*, 15 February 2001. https://www.esma.europa.eu/sites/default/files/library/2015/11/lamfalussy_report.pdf

the ensuing European debt crisis, as cross-border financial flows dropped severely. Between October 2008 and October 2011, the Commission approved EUR 4.5 trillion of state aid measures to help financial institutions[7]. The crisis revealed the urgent need for reform of the financial services sector.

Consequently, the EU undertook an unprecedented reform of its existing financial services legislation based on the international agenda (in the development of which the EU played an important role) but also own-initiative reforms to advance certain long-standing efforts such as the completion of the single market. The Commission has proposed more than 50 legislative and non-legislative measures since the outbreak of the crisis. The most important proposals have come under EU flagship initiatives such as the Banking Union and the Capital Markets Union. The post-crisis reforms have brought a certain degree of centralisation and transfer of responsibility from national to EU level in many aspects of financial services regulation and supervision.

International forums have become the *de facto* main level for the setting of rules and standards in the post-crisis financial services regulatory architecture. This is due to the globalisation and interdependence of financial markets which materialised in the decades preceding the crisis and which grew into the global 'contagion effect' following the initial crisis outbreak in the United States. There was widespread agreement that regulatory challenges needed to be tackled at international level. Forums and bodies such as the G20, the Financial Stability Board (FSB), the Basel Committee on Banking Supervision (BCBS), the International Association of Insurance Supervisors (IAIS) and the International Organisation of Securities Commissions (IOSCO) gained importance and, in many cases, took precedence over the established EU decision-making processes.

KEY EU FINANCIAL SERVICES LEGISLATION IN PLACE

A. Banking

1. Capital Requirements Directive (CRD) (2013/36/EU)[8] and Capital Requirements Regulation (CRR) ((EU) No 575/2013)[9], jointly referred to as CRD IV.

CRD IV, adopted in 2013, is a transposition of the Basel III rules tailored to the European banking sector, which takes into account Parliament's 2010 priorities. The CRD sets rules on access to the activity of credit institutions and investment firms, prudential supervision and corporate governance. The CRR establishes the minimum level and rules on how to calculate capital requirements, liquidity buffers and leverage ratios. In November 2016, the Commission proposed amendments to the CRD IV/CRR (dubbed CRD V), mainly in order to reflect the latest developments within the framework of the Basel Committee and the FSB. In December 2017, the Commission adopted proposals to amend prudential rules for investment firms, which are currently subject to the same rules as banks. In May 2019, the co-legislators adopted a package of banking reforms, including amendments to the capital requirements legislation.

[7]European Commission Press Release, *New crisis management measures to avoid future bank bail-outs*, 6 June 2012. http://europa.eu/rapid/press-release_IP-12-570_en.htm

2. Bank Recovery and Resolution Directive (BRRD) (2014/59/EU)[10]

Adopted in 2014, the BRRD seeks to prevent bailouts of failing banks using taxpayers' money by introducing a 'bail-in' mechanism, which ensures that the bank's shareholders and creditors are first in line to cover losses. It also requires Member States to establish national resolution funds financed upfront by credit institutions and investment firms to cover outstanding losses. The BRRD also lays out rules for prevention (recovery and resolution plans) and early intervention by national competent authorities.

3. Single Resolution Mechanism Regulation (SRMR) (806/2014)[11]

The EU bank resolution framework is complemented by the SRMR, adopted in 2014, which sets out provisions for Member States participating in the Banking Union. In November 2016, the Commission proposed amendments to the BRRD and SRMR in order to incorporate the total loss-absorbing capacity (TLAC) standard for global systemically important banks (G-SIBs), which ensures that, if such banks fail, they have enough own funds to allow an orderly resolution. In December 2017, one of the BRRD amendments was adopted (2017/2399)[12] in a fast-tracked procedure. It allows the creation of a new class of 'non-preferred' senior debt securities in order to ensure that the eligibility criteria described in the TLAC standard are fulfilled. In May 2019, the co-legislators adopted a comprehensive set of reforms proposed by the Commission to further strengthen the resilience and resolvability of EU banks, including the BRRD and the SRMR.

B. Financial markets

1. Markets in Financial Instruments Directive (MiFID)

From 2004, MiFID I (2004/39/EC)[13] laid down uniform standards governing securities trading, which made for more competition and improved investor protection. In 2014, a revision of the directive (MiFID II) (2014/65/EU)[14] and a regulation (MiFIR) (600/2014)[15] were adopted, establishing a new legal framework. This framework introduces a number of provisions aimed at enhancing consumer protection. For instance, investment firms' remuneration practices cannot conflict with their duty to act in the customer's best interest. The date of application of MiFID II and MiFIR is 3 January 2018.

2. European Market Infrastructure Regulation (EMIR) (648/2012)[16]

Adopted in 2012, EMIR sets out rules regarding over-the-counter (OTC) derivative contracts, central counterparties (CCPs) and trade repositories. It seeks to preserve financial stability, mitigate systemic risk and increase transparency in the OTC market. In 2015 and 2016 the Commission undertook a review of EMIR, which led to two legislative amendments adopted by the co-legislators in May 2019.

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[12]OJ L 345, 27.12.2017, p. 96.
[13]OJ L 145, 30.4.2004, p. 1.
[14]OJ L 173, 12.6.2014, p. 349.
[15]OJ L 173, 12.6.2014, p. 84.

C. Insurance

1. Solvency II Directive (2009/138/EC)[17]

Solvency II, adopted in 2009, harmonised existing piecemeal rules for the non-life insurance, life insurance and reinsurance sectors. The directive set out rules concerning authorisation for the taking-up of business, capital requirements, risk management and supervision of direct insurance and reinsurance companies. In 2014, Solvency II was amended with Omnibus II, in order to take account of the new supervisory architecture and, in particular, the European Insurance and Occupational Pensions Authority (EIOPA). The transposition deadline for Solvency II was subsequently postponed and it became applicable on 1 January 2016.

D. Payment services

1. Payment Services Directive 2 (PSD 2) (2015/2366)[18]

PSD 2 entered into force on 12 January 2016 and became applicable as of 13 January 2018. It lays down strict security requirements for electronic payments and for the protection of consumers' financial data. It also opens up the market to providers offering payment services based on access to information about the payment account. PSD 2 also contains provisions concerning the authorisation and supervision of payment institutions.

ROLE OF THE EUROPEAN PARLIAMENT

From the 1957 Treaty of Rome to the present day, Parliament's role in decision-making on financial services has grown from the confines of the consultation procedure to reach an equal footing with the Council under the ordinary legislative procedure.

According to the 'Lamfalussy process' for adopting and implementing EU financial services legislation, Parliament, together with the Council, adopts basic laws (level 1) under the ordinary legislative procedure. Parliament also has a scrutiny role in the adoption of level 2 implementing measures.

Parliament has consistently supported the work of the Commission, moving discussions forward on many occasions and issuing own proposals to make its position clear. By virtue of its proactive approach, Parliament is prominently involved both in the ongoing debate with the Commission, the Council and other international institutions about development of the supervisory and regulatory structure for financial markets, and in exploring ways of addressing systemic risk.

Within Parliament, the Committee on Economic and Monetary Affairs (ECON) is the lead committee for financial services.

After the outbreak of the global financial crisis, Parliament set up a Special Committee on the Financial, Economic and Social Crisis (CRIS)[19]. Its mandate lasted from October 2009 until July 2011. Parliament adopted two resolutions following the work of the CRIS Committee: a mid-term resolution in 2010 and a final resolution in 2011.

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[19]European Parliament, *Special Committee on the Financial, Economic and Social Crisis*, July 2011. http://www.europarl.europa.eu/document/activities/cont/201109/20110901ATT25750/20110901ATT25750EN.pdf

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