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 has come in phases: (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 (1993-2007); and (5) the global financial crisis and post-crisis reform (from 2007 onwards).

LEGAL BASIS

The legal basis is provided by 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.

MILESTONES ON THE ROAD TOWARDS AN INTEGRATED EU FINANCIAL MARKET

A. Early efforts at removing barriers to entry (1957-1973)

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. In 1962, the Council adopted general programmes for the abolition of restrictions on freedom to provide services and freedom of establishment.

B. Harmonisation of national laws and policies (1973-1983)


C. Completion of the internal market (1983-1992)

In June 1985, the Commission published a white paper detailing a programme and timetable for the completion of the internal market by the end of 1992. It included a specific section on financial services. The harmonisation proposed was based on the principles of a single banking licence, mutual recognition and home country control. The 1987 Single European Act incorporated into primary EU law the goal set in the 1985
White Paper, setting a precise deadline of 31 December 1992 for the completion of the internal market.

D. Creation of the single currency area (1993-2007)

The Maastricht Treaty, which came into force in 1993, paved the way for the creation of a single European currency: the euro (originally called ECU). The Commission published a financial services action plan in May 1999, which included 42 legislative and non-legislative measures to be completed by 2004. In July 2000, the Council set up the Committee of Wise Men on the Regulation of European Securities Markets, led by Alexandre Lamfalussy. The committee’s final report identified that the EU’s institutional framework was ‘too slow, too rigid, complex and ill-adapted to the pace of global financial market change’. It led to the ‘Lamfalussy process’, a four-level legislative approach first used only for securities legislation, but later expanded to other areas of financial services legislation.

E. Global financial crisis and post-crisis reform (from 2007 onwards)

The period leading up to 2007 was characterised by the 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, creating an urgent need for reform of the financial services sector. The Commission proposed more than 50 legislative and non-legislative measures. The most important proposals came 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 transferred responsibility for many aspects of financial services regulation and supervision from national to EU level. More recently, the EU financial services policy agenda has reflected the efforts made to address climate change and develop a more sustainable economic path, and addresses the new challenges related to digital transformation.

In view of possible contagion effects, the role of international forums in setting rules and standards increased significantly. Forums and bodies such as the G20, the Financial Stability Board (FSB), the Basel Committee on Banking Supervision (Basel Committee), the International Association of Insurance Supervisors (IAIS) and the International Organization of Securities Commissions (IOSCO) therefore acquired increasing importance for EU regulators and supervisors.

KEY EU FINANCIAL SERVICES LEGISLATION IN PLACE

A. Banking

The reform of the regulatory framework for banking was at the centre of the post-crisis legislative overhaul of the financial sector. It laid the foundations for the Banking Union that was gradually established in the euro area. The regulatory reform of the banking sector included wide-ranging measures establishing: (1) stronger prudential requirements for banks; (2) an enhanced architecture for bank supervision and resolution; (3) rules for managing failing banks; and (4) improved protection for depositors. These initiatives are collectively referred to as the ‘single rulebook’.
1. Prudential requirements for banks
The Capital Requirements Directive (CRD) (2013/36/EU) lays down rules on access to the activity of credit institutions and investment firms, prudential supervision and governance of banks. The Capital Requirements Regulation (CRR) ((EU) No 575/2013) establishes the minimum standards to ensure the financial soundness of banks (i.e. capital requirements, liquidity buffers and leverage ratios). The CRD/CRR framework is updated continually, mainly in order to reflect the latest outcomes of the work of the Basel Committee and the FSB.

2. Enhanced architecture for bank supervision and resolution
Since 2014, under the Single Supervisory Mechanism (SSM) Regulation ((EU) No 1024/2013), the ECB is the central prudential supervisor for large banks in the euro area and in non-euro Member States that choose to join the SSM. The SSM is complemented by the Single Resolution Mechanism Regulation ((EU) No 806/2014), also adopted in 2014, which aims to ensure efficient management of failure of banks that are part of the SSM.

3. Rules for managing failing banks
Also adopted in 2014, the Bank Recovery and Resolution Directive (2014/59/EU) 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 its losses. It requires Member States to establish national resolution funds.

4. Improved protection for depositors
Amid the turmoil of the financial crisis, a key priority was to ensure adequate protection of citizens’ bank deposits. As a first response, the minimum amount up to which bank deposits are guaranteed in the event of a bank failure was increased twice. This was followed by a more comprehensive reform of the then very fragmented system of national deposit guarantee schemes through the Deposit Guarantee Schemes Directive (2014/49/EU) in 2014. Proposed in 2015, the European Deposit Insurance Scheme has so far met with political obstacles both in Council and in Parliament. In April 2023, the Commission adopted a legislative package to reform the bank crisis management and deposit insurance framework.

B. Financial markets and market infrastructure
1. Investment services and trading venues
In 2004, the Markets in Financial Instruments Directive (MiFID I) (2004/39/EC) laid down uniform standards governing securities trading with the aim of improving competition and investor protection. In 2014, a revision of the directive (MiFID II) (2014/65/EU) and a regulation (MiFIR) ((EU) No 600/2014) were adopted, significantly updating the legal framework. This framework introduces a number of provisions aimed at enhancing consumer protection and market transparency. Both were revised several times.

2. Derivatives contracts and clearing houses
Derivatives contracts play an important economic role, but also involve certain risks, which were highlighted during the financial crisis. Adopted in 2012, the European
Market Infrastructure Regulation (EMIR) (EU No 648/2012) sets out rules regarding over-the-counter (OTC) derivative contracts, central counterparties (CCPs, or clearing houses) and trade repositories. It seeks to preserve financial stability, mitigate systemic risk and increase transparency in the OTC market. The regulation is regularly reviewed and updated. CCPs could pose a risk to financial stability were they to fail. In December 2020, the co-legislators adopted the CCP Recovery and Resolution Regulation (EU) 2021/23 enabling orderly resolution in a crisis scenario.

3. Access to capital market funding

The flagship initiative on building a Capital Markets Union envisaged a substantial review of the EU framework for public offerings of securities (i.e. initial public offerings or IPOs). The Prospectus Directive of 2003, 2003/71/EC, now replaced by Regulation (EU) 2017/1129, aims to facilitate the access of smaller companies to capital market funding, and to improve the quality and quantity of the information to be provided to investors, in particular retail investors. The efforts to improve funding opportunities for smaller companies were supplemented by the European Crowdfunding Regulation (EU) 2020/1503, which applies as of November 2021.

C. Insurance

The Solvency II Directive (2009/138/EC) 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. The Solvency II framework was amended several times.

D. Payment services

The second Payment Services Directive (EU) 2015/2366 updated the EU framework on payments to adapt it to the new developments in digital payments. It became applicable as of 13 January 2018. It reinforces the security requirements for electronic payments and the standards for the protection of consumers' financial data. It also opens up the market to innovative business models ("open banking") and contains provisions concerning the authorisation and supervision of payment institutions.

E. Sustainable Finance

The financial system has an important role to play in supporting efforts towards a transition to a greener, fairer and more inclusive economy and society. The sustainable finance action plan of March 2018 endeavours to take due account of environmental, social and governance considerations when making investment decisions in the financial sector. The key elements of the current legislative framework include the EU Taxonomy Regulation (EU) 2020/852, the Regulation on sustainability-related disclosures in the financial services sector (EU) 2019/2088 and the Regulation on sustainability-related disclosures for benchmarks (EU) 2019/2089. Further initiatives are under way.

F. Digital Finance

The use of new technologies in finance (fintech) brings with it the promise of increased competition and new, more efficient or more beneficial products and services. It also adds complexities and poses challenges for regulators and supervisors. In
September 2020, the Commission launched the Digital Finance Strategy, which was followed on by several legislative initiatives. In particular, the Regulation on digital operational resilience for the financial sector (DORA) ((EU) 2022/2554) establishes a uniform framework to ensure that financial institutions are able to mitigate and withstand cyber and other ICT-related risks; and the Regulation on markets in crypto-assets (MiCA) sets out standards for issuing crypto-assets and providing related services. The Regulation on a pilot regime for market infrastructures based on distributed ledger technology ((EU) 2022/858) is akin to a regulatory sandbox, i.e. allows for a flexible regulatory environment.

ROLE OF THE EUROPEAN PARLIAMENT

Since the 1957 Treaty of Rome, Parliament’s role in decision-making on financial services has grown from the confines of the consultation procedure to its being on an equal footing with the Council, as the ordinary legislative procedure is now used in many policy areas.

Under 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 (EU secondary legislation). Parliament also has a role in scrutinising the adoption of level 2 implementing measures.

Parliament has been actively involved in carrying forward the ambitious legislative projects for developing the EU regulatory framework for the financial sector. Within Parliament, the Committee on Economic and Monetary Affairs (ECON) is the lead committee for financial services.

In the past, in the context of the global financial crisis, Parliament set up the Special Committee on the Financial, Economic and Social Crisis (CRIS). The special committee operated from October 2009 until July 2011 and its work concluded with a Parliament resolution containing a number of recommendations on the measures and initiatives to be pursued in response to the crisis.

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