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: (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 the pre-crisis period (1993-2007); and (5) the global financial crisis and post-crisis reform (from 2007 onwards). The digital and green transformation has brought additional opportunities and challenges for financial services policy. 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

The legal basis for directives and regulations dealing with financial services 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 (TFEU).

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. 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 liberalisation.

In 1962, the Council duly 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 on insurance and banking between 1964 and 1973.
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[1] detailing 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 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[2]. Driven by the introduction of the euro and the impetus this gave to addressing the remaining segmentation of EU financial markets, the Commission published the Financial Services Action Plan (FSAP)[3] in May 1999. 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[4], published in February 2001, gave a diagnosis of the state of the EU financial market and provided a number of recommendations. It identified that the EU’s institutional framework was ‘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 out of the 42 measures adopted, with some even going beyond what had initially been envisaged. Two measures followed in 2005, leaving only one pending, the 14th Company Law Directive on the cross-border transfer of company seats.

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[2]For more details on the history of the economic and monetary union, see factsheet 2.6.1 on that topic.
E. Global financial crisis and post-crisis reform (from 2007 onwards)

The period leading up 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 the ensuing European sovereign 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. The crisis revealed the urgent need for reform of the financial services sector.

The EU therefore undertook an unprecedented overhaul of its existing financial services legislation on the basis of the international agenda and adopted its own reforms to advance certain long-standing goals, such as the completion of the single market. The Commission proposed more than 50 legislative and non-legislative measures after the outbreak of the financial crisis. 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.

The role of international forums in setting rules and standards has increased significantly in the post-crisis financial services regulatory architecture. This is due to the globalisation and interdependence of financial markets, which increased substantially in the decades preceding the crisis, and which became clear in the global ‘contagion effect’ following the initial outbreak of the crisis 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) therefore acquired increasing importance.

More recently, the EU financial services policy agenda has reflected the efforts made to address climate change and develop a more sustainable economic path. New and emerging challenges related to the digital transformation and the technological developments in finance have also influenced the financial sector policy agenda in recent years.

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) enhanced architecture for bank supervision and resolution;

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[6]For more details on the Banking Union, see the relevant factsheet (2.6.5).
(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) sets rules on access to the activity of credit institutions and investment firms, prudential supervision and governance of banks. The Capital Requirements Regulation (CRR) (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 BCBS and the FSB. The most recent revision of June 2020 (the so-called CRR quick fix) included a package of adjustments to the prudential framework aiming to facilitate lending by banks as a response to the COVID-19 crisis. In November 2019, the co-legislators also updated the prudential rules applicable for investment firms (the Investment Firms Directive and Regulation), which up to then were subject to the same rules as banks. A broader review of the CRD/CRR framework is planned in 2021, aiming to implement the final elements of the internationally agreed prudential standards for credit institutions developed by the BCBS, also known as the ‘Basel III framework’.

2. Enhanced architecture for bank supervision and resolution

Since 2014, under the Single Supervisory Mechanism Regulation (SSMR) (1024/2013), the ECB is the central prudential supervisor for all 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 (SRMR) (806/2014), also adopted in 2014, which aims to ensure efficient management of potential future failures of banks that are part of the SSM. The Single Resolution Board is the central authority in charge of the decision to initiate the resolution of a bank.

3. Rules for managing failing banks

Also adopted in 2014, the Bank Recovery and Resolution Directive (BRRD) (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 financed upfront by credit institutions and investment firms to cover outstanding losses. The BRRD also establishes rules for prevention (i.e. recovery and resolution plans) and early intervention by national competent authorities.

4. Improved protection for depositors

Amid the turmoil of the financial crisis, an essential 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 case 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. Since the adoption of the Deposit Guarantee Schemes Directive (DGSD) (2014/49/EU) in 2014, Member States are obliged to ensure a harmonised level of protection for depositors, and at least one DGS in their territory, which all banks in that Member State are required to join. Subsequently, as part of the Banking Union project, the European Deposit Insurance Scheme (EDIS)
was proposed to supplement the current system of national DGSs. It aims to provide a stronger and more uniform degree of deposit insurance cover in the euro area.

B. Financial markets and market infrastructure

1. Investment services and trading venues

From 2004, the Markets in Financial Instruments Directive (MiFID I) ([2004/39/EC](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0039&from=en)) 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](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0065&from=en)) and a regulation (MiFIR) ([600/2014](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0600&from=en)) were adopted, significantly updating the legal framework. This framework introduces a number of provisions aimed at enhancing consumer protection and market transparency. Both instruments became applicable on 3 January 2018 and were subsequently 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) ([648/2012](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0648&from=en)) 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. EMIR was subsequently updated by the co-legislators in May 2019, thereby enhancing the supervision of EU and third-country CCPs. CCPs play an increasingly important role in financial markets and could pose a risk to financial stability were they to fail. Therefore, the co-legislators adopted the CCP Recovery and Resolution Regulation ([2021/23](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021R0230&from=en)) in December 2020 with the aim of providing an adequate toolkit and 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 offering of securities (i.e. initial public offerings or IPOs). The Prospectus Regulation ([2017/1129](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1129&from=en)), adopted in June 2017 (and replacing the Prospectus Directive of 2003, ([2003/71/EC](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0071&from=en))), 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 ([2020/1503](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R1503&from=en)), which is to become applicable in November 2021. Crowdfunding is an innovative and increasingly popular form of financing for start-ups and SMEs at an early stage of company growth. The new EU framework aims to provide legal certainty for crowdfunding platforms, enable them to operate across the Union, and boost the funding opportunities for small companies. The co-legislators reached an agreement on the proposal in December 2019.

C. Insurance


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requirements, risk management and supervision of direct insurance and reinsurance companies. The Solvency II framework was amended a few times, mainly to provide clarity on the treatment of insurance products with long-term guarantees, and to incentivise investments in infrastructure and long-term sustainable projects. A further review is due in 2021 with a view to promoting further long-term investment by insurance companies and taking into account the consequences of the COVID-19 pandemic.

D. Payment services

The Payment Services Directive 2 (PSD 2) (2015/2366)\(^8\) updated the EU framework on payments to adapt it to the new developments in digital payments. It entered into force on 12 January 2016, and 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 offering payment services based on secure access to clients’ payment accounts (‘open banking’). PSD 2 also contains provisions concerning the authorisation and supervision of payment institutions.

E. Sustainable Finance

The financial system has an important role to play in supporting the efforts towards a transition to a greener, fair and more inclusive economy and society. The Sustainable Finance Action Plan of March 2018 forms part of the broader efforts to make finance flows consistent with these endeavours. Sustainable finance generally refers to the process of taking due account of environmental, social and governance (ESG) considerations when making investment decisions in the financial sector, thereby leading to increased longer-term investments in sustainable economic activities and projects. The key elements of the current legislative framework include the Common EU Taxonomy Regulation (2020/852), the Sustainability Disclosures Regulation (2019/2088) and the Regulation on Climate-related Benchmarks (2019/2089). Further initiatives are forthcoming to provide the policy tools to ensure that the financial system genuinely supports the transition towards sustainability (i.e. a legislative proposal on the EU Green Bonds Standard is expected in 2021).

F. Digital Finance

While technological innovation in finance is nothing new, investment in new technologies has substantially increased in recent years and the pace of innovation is exponential. 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 across the globe. Jurisdictions across the EU and beyond have adopted various initiatives to keep abreast of the rapid technological developments and to encourage the development of their own FinTech ecosystems. In September 2020, the Commission launched the Digital Finance Strategy together with legislative initiatives on regulating markets in crypto-assets (MiCA) and on increasing the digital operational resilience of financial institutions (DORA).

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\(^8\)OJ L 337, 23.12.2015, p. 35.
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 an equal footing with the Council, as the ordinary legislative procedure is now used in many policy fields.

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 scrutiny role in 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. By virtue of its proactive approach, Parliament is prominently involved in the ongoing debate with the Commission, the Council and other international institutions about the development of the supervisory and regulatory structure for financial markets, as well as in exploring ways of addressing systemic risk and the challenges emerging from fast-paced technological developments.

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 the Special Committee on the Financial, Economic and Social Crisis (CRIS)\(^9\). Its mandate lasted from October 2009 until July 2011. Parliament adopted two resolutions as a result of the CRIS Committee’s work: a mid-term resolution in 2010 and a final resolution in 2011.

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05/2021

\(^9\)European Parliament, Special Committee on the Financial, Economic and Social Crisis, July 2011.