



After the Financial Services Action Plan: A Repeat of the post-1992 Blues?

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However passé it may seem, the practise of national politicians blaming Brussels for whatever political or economic ills beset their countries appears to resurrect whenever the only viable alternative is domestic reform. Nowhere is this realisation more evident than in the caustic French debate over the EU's proposed Constitutional Treaty: the notion of liberalising trade in services within the EU was anathema to the average French voter in 2005. And yet, as a pillar of the 1957 Rome Treaty, the principle of free trade in (goods and) services represented a cornerstone of the drive for deeper integration over the past fifty years (!), not to mention that in the aftermath of the 1992 Maastricht Treaty, services market liberalisation—up to that point the Achilles heal of the Single Market—was to be pursued with renewed vigour. The violent re-awakening of a debate that was supposedly closed half a century ago thus acquires a particular flavour of irony against the morbid backdrop of the steadily declining global competitiveness of the EU economy. As the stoic Januses in national administrations fight off intra-EU competition, paradoxically seen to be the enemy of national “competitiveness”, while at the same time trying to condition the EU into becoming a heavyweight on the international scene, the limpid corpse of the Lisbon Agenda languishes in the graveyard of unfulfilled political promises. Is a similar fate awaiting the bold undertaking—launched in 1999—to create a single market in financial services?

Phase I of the Financial Services Action Plan (FSAP) is now drawing to a close. With the adoption of the revised Capital Adequacy Directive that transposes Basel II principles into EU law in October 2005, as well as the adoption of the 10th Company Law Directive in the same month, forty-one out of the forty-two directives originally planned have been adopted through the co-decision procedure. The last holdout is the 14th Company Law Directive on the cross-border transfer of the registered office of limited companies. Although the Commission was able to achieve 93% of the legislative program before the promised mid-2004 deadline, a single market is not created from EU legislative initiatives alone. Much more important still is the ability and willingness of the Member States to implement the legislation in a timely and accurate manner and above all to enforce it.

So far, the FSAP record is at best mixed. As shown on the DG Market website, the rate of transposition of FSAP directives at the national level remains pitifully low. With a view to buttressing the Lisbon Agenda with a vibrant single market, the Commission had set a target transposition rate of 98.5%. But as of May 2005, the best performers (Austria, Denmark, Germany and Ireland) were just barely over 80%. On the other hand, the efforts of some other Member States can be characterised as none other than miserable, led by the Netherlands and Greece (just over 40%). Many new member states are struggling, although one must appreciate the enormity of the task that lies before them to implement the existing acquis as well as to keep up to date on the latest FSAP measures.

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Some directives have been plagued with horrid transposition rates: According to the Commission transposition tables, not a single Member State notified the Commission about the Conglomerates Directive; the Accounting Provisions of Company Law and Market Abuse Directives (MAD) achieved implementation of below 5% and barely above 10%, respectively, at the time of the transposition deadline. In fact, only one country, Lithuania, had complied with the October 2004 deadline set in the MAD. The directives on winding up of credit institutions (40%) and fair value accounting fared better (just below 50%), but were still not implemented by a majority of Member States.

At this stage, a parallel can be drawn with the effort to create a Single Market in the run-up to Maastricht. Armed with the principle of mutual recognition, Jacques Delors and Lord Cockfield were able to push through 282 directives and regulations to dismantle existing non-tariff barriers to trade. By the target date of 31 December 1992, over 90% of the planned legislation had been passed and over 80% of it had been transposed at the Member State level. But despite the declaration at Maastricht, the creation of a Single Market in goods and services remains an ongoing project.

The liberalisation of financial services is rendered especially difficult by the large spaces carved-out from the freedom of movement/establishment principles by generous interpretations of the 'general good' clause. In the face of information asymmetries and systemic risks, national regulators, perhaps prodded by dominant firms in their jurisdictions, have trouble believing that their counterparts in other Member States can achieve the same level of investor protection for their nationals and ensure the same degree of systemic stability in their home jurisdictions. As such, the general good clause represents a major non-tariff barrier to trade in financial services. The new Lamfalussy committee structure should help to pare down protectionist abuses by fostering trust-building exercises, although one cannot expect a sea-change overnight.

As the dust from the frantic legislative efforts of recent years settles, something of a consensus view has emerged on the FSAP and how to proceed with the single market for financial services. First, it is too early to judge whether or not the FSAP has been a success, since enforcement is the key. Second, a greater emphasis must be placed on external competitiveness. Third, close international cooperation is vital. Fourth, new legislation must remain limited to a few targeted fields, guaranteeing that no FSAP II will follow. Overall, regulatory impact assessments will be a litmus test for new legislative initiatives, and greater use of non-legislative instruments is expected. Foremost among these is competition policy. Commissioner Neelie Kroes has already signalled her intention to launch a broad sectoral investigation into financial services in the near future.

Since the stakes are so high, the Commission must react to flagrant Treaty violations with gusto. The Kok Report on revamping the Lisbon Agenda has suggested that the Commission respond aggressively to a lack of cooperation on the part of Member States in exercising their responsibilities vis-à-vis the Single Market by "naming and shaming" the sinners. President Barroso signalled at the outset of his mandate that he prefers less confrontational tactics. Nevertheless, free-riders must not be allowed to carry on, as they cost the EU valuable points in terms of lost economic growth.

Going forward, close cooperation between various Commission departments, especially DGs Trade, Markt and Competition, will be vital to ensuring coherence in policy. Continued inter-institutional rivalries and the jealous guarding of sovereignty that was already ceded to the EU must not be allowed to strangle the Single Market. Already, it has a history of trying to allocate resources efficiently while handcuffed. How to motivate the Member States to exercise ownership was, and will remain, the outstanding policy challenge with regard to creating a single market for financial services in the EU and to realising the unexploited potential of this powerful engine for economic growth.