From Lord Flight

Government Consultation on the 'balance of competences' between the EU and UK

I have spent 40 years working in the Financial Services Industry – mostly investment management; I am a Director of Metro Bank, Director of Investec Asset Management (previously Guinness Flight Global Asset Management); Chairman of another investment management business; Chairman of two closed end investment Funds and Director of another; long standing Consultant to a major provider of outsourced Regulatory Compliance Services and Consultant/Chairman of 2 Financial Services Industry representative bodies.

While a single Pan-EU set of rules for the Financial Services Industry has its theoretical attractions, in practice it does not work, largely because of the particular importance of London as a major international financial centre, dwarfing the rest of the EU. The Brown Government ceding, mistakenly, financial regulatory sovereignty to the EU back in 2009, has led to increasingly inappropriate Pan EU regulation for the UK; and what have, in practice, sometimes amounted to attempts to damage the position of London.

The worst so far is AIFMD which is creating major unnecessary costs and work for much of the investment management industry, to little or no perceived purpose. Its apparent justification is the misconception that the financial crisis and the problems which the Euro has encountered have been caused by Hedge Funds. The CEO and Chairman of the FCA and the relevant Treasury Minister have publically agreed that AIFMD is mistaken and causes substantial work and costs to no worthwhile purpose.

The City of London Corporation's submission claims that the Financial Services Industry has no wish to see any financial service regulatory activity repatriated. It does not, of course, in any way represent the Financial Services Industry, but is rather the "local government" for the City jurisdiction. But as far as I am aware, it has not consulted with the Industry in arriving at what I believe to be a mistaken conclusion here.

1 How have EU rules on financial services affected you or your organisation? Are they proportionate in their focus and application? Do they respect the principle of subsidiarity? Do they go too far or not far enough?

EU rules on Financial Services have affected some of the organizations with which I am involved. In particular, AIFMD is proving a cause of very substantial unnecessary work and expenditure to no apparent advantage. Prior to this MiFID, though more deal-able with, was less than suitable for the particular UK businesses to which it applied.

Both also represent a form of concealed EU protectionism. AIFMD is wholly disproportionate in its application.

Neither respect the principal of subsidiarity.

2 How might the UK benefit from more or less EU action? Should more legislation be made at the national or EU level? Should there be more non-legislative action, for example, competition enquiries?

It has become apparent that it was a mistake for the UK to surrender unlimited sovereignty to the EU for Financial Regulation. Given the major international business of the City of London, the UK needs to repatriate sovereign powers over financial regulation. Where there are any particular issues which, from a European business potential, need to be in line with the EU, this could be achieved on a negotiated/cooperative basis.

3 How have EU rules helped or made it harder to achieve objectives such as financial stability, growth, competitiveness and consumer protection?

I do not believe EU rules have contributed to financial stability. They have been negative for growth, competitiveness and consumer protection.
Already, significant Hedge Fund businesses have relocated from the UK losing jobs and tax revenue.
The requirements of AIFMD, in particular, are anti-competitive with regard to the providers of Fund administration and depository services – in practice obliging AIFMs to move to the "oligopoly" of large scale providers of both services.
The costs of EU Regulation and, in particular, AIFMD are ultimately borne by the client/consumer.

4 Is the volume and detail of EU rule-making in financial services pitched at the right level? Has the use of Regulations or Directives and maximum or minimum harmonisation presented obstacles to national objectives in any cases?

EU Financial Services rules/directives are far too many and too detailed for an EU regime to be acceptable to the UK, and London in particular. There should be considerably greater scope for national interpretation. It is unacceptable for ESMA to determine how supervision is done in the UK, while other EU States, blatantly, disregard much of its requirements.
One element of the problem is the EU political dislike of the Financial Services Industry.

5 How has the EU's approach to Third Country access affected the ability of UK firms and markets to trade internationally?

The issue here is what amounts to protectionist EU measures, e.g. AIFMD, deliberately seeking to restrict access to Continental EU markets by limiting free access to AIFMD Funds based in the EU. There are also similar protectionist proposals in MiFD 2 to limit access to the EU market for non-EU based businesses. Going forward, businesses based in the UK are increasingly moving that part of their business/products which are not geared to EU markets elsewhere – particularly Singapore and Hong Kong. All this is damaging for what would otherwise be UK, London based businesses trading internationally.

6 Do you think that more or less EU-level regulation in the area of retail financial services would bring benefits to consumers?

The UK, FCA initiative is doing a great deal more for retail consumers than EU level regulation which, if anything, is damaging to consumers, both because of its costs and limitations on promotion. Here, in particular, the EU agenda to disallow the marketing of any form of sophisticated product to ordinary individuals is undemocratic and against consumers' interests.

7 What has been the impact of the shift towards regulation and supervision at the EU level, for instance with the creation of the European Supervisory Authorities?
Should the balance of supervisory powers and responsibilities be different?

It is both undesirable and inappropriate for ESMA to determine how supervision is carried on in the UK.

8 Does the UK have an appropriate level of influence on EU legislation in financial services? How different would rules be if the UK was solely responsible for them?

While representatives of the Treasury, FCA, PRA and other UK organizations do their best to influence outcomes on EU financial services directives and law, they cannot out-vote a hostile majority. While a group of UK MEPs were able to form an alliance to head off inappropriate regulation regarding senior executives' pay in the mainstream investment management industry, regulations limiting cash bonuses have been introduced in relation to Hedge Fund managers. This, again, will simply lead to Hedge Funds moving elsewhere. If the UK remained responsible here, there would be proper consultation and democratic accountability.

9 How effective and accountable is the EU policy-making process on financial services legislation, for example how effective are EU consultations and impact assessments? Are you satisfied that democratic due process is properly respected?

Already largely answered per 8 above, but the proposed Financial Transaction Tax is the biggest example yet of the failure of consultations and due process. The Commission has even admitted that its proposals to oblige non-participating countries to collect the Tax on behalf of participating EU countries, is illegal. The Financial Transaction Tax proposal is also the clearest example of EU initiatives which would be particularly damaging to London as the major international financial centre in Europe.

10 What has been the effect of restrictions placed on Member States' ability to influence capital flows into and out of their economy, for example to achieve national public policy or tax objectives?

The effect of restrictions on Member States ability to influence capital flows into and out of their economies is difficult to identify and assess. The most obvious element is, and will be increasingly, the movement of businesses from London to mostly Asia, in order to escape the costs and hassle of excessive EU financial services regulation.

11 What may be the impact of future challenges and opportunities for the UK, for example related to non-membership of the euro area or development of the banking union?

With regard to anticipated banking Union measures, it is likely that the Bank of England/PRA and ECB will cooperate successfully but there remains the risk, even with the changed EBA voting structure, that if a sufficient number of other EU members join the Euro, the UK could be outvoted and forced to accept ECB Regulation. This would be wholly inappropriate given that the size of the banking industry which the Bank of England/PRA regulate is of similar size to that of the Eurozone, for which the ECB is responsible.

12 Do you have any further comments about issues in addition to those mentioned above?

The Europhile case, as represented by, for example, the City of London Corporation's Submission, is that access to Europe by the City of London is only secure with common financial regulation (whether good or bad); and that if the UK withdrew from either common financial services regulation or, for that matter, from the EU itself, London would suffer the

loss of EU related businesses; and that international, financial services organizations, wanting EU access might move from London to e.g. Frankfurt. While these concerns are understandable, I believe they are exaggerated, essentially as only London has the depth and range of expertise to provide much of the sophisticated Financial Services which the rest of the EU needs and wants. EU member states are likely to continue to avail themselves of these services in London.

Ironically, for the investment management industry, including the Hedge Fund industry, the Eurozone has not been a major market. UK institutions have continued to encounter local protectionist policies, making access to retail EU markets difficult – this has been the case particularly in Italy and France. Switzerland remains the largest market in Europe (not EU) for London's financial services.
There is also "the other side of the coin", where Regulation imposed by the EU on London makes London's services less attractive to the growing wealth of the Emerging economies and, in particular, Asia. Substantial financial services potential is now starting to open up for London, collaborating with China, where the scope would be helped if the UK returned to tailoring its own Financial Services Regulation, to the needs of its global customers.
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The Lord Flight