

Regulatory Impact Assessment

1. This regulatory impact assessment accompanies the Statutory Instruments implementing the E-Commerce Directive (“ecd”) in the area of financial services.

These are:

- The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (Electronic Commerce Directive) Order 2002
- The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (Electronic Commerce Directive) Order 2002
- The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002

The Government has an obligation under European Community law to implement the ecd into UK law.

Purpose and Intended Effect in the Financial Services Area

2. The ecd is designed to enhance the functioning of the EC internal market by removing specific legal barriers to the free movement of information society services (“ISS”) between EEA member states, and by improving the level of legal certainty surrounding the provision of such services. It seeks to achieve this by creating a “country of origin” framework for the regulation of ISS, and includes provisions in the following areas:

- establishment of service providers,
- commercial communications,
- electronic contracts,
- the liability of intermediaries,
- codes of conduct,

- court actions, and
- cooperation between member states.

3. The impact of the ecd in the area of financial services is potentially wide-ranging. Many financial services transactions are (and will increasingly be) likely to be conducted by electronic means across borders between EEA states. The directive will apply in respect of all such services falling within the definition of ISS contained in article 2(a) of the ecd. As that definition is largely concerned with the medium through which services are provided, rather than their subject-matter, cross-border financial services of all kinds may fall within the scope of the directive.

Benefits

4. The Government believes that the ecd should bring substantial benefits to ISS service providers established in the UK. Under the ecd, they will be subject to regulation by the Financial Services Authority ("FSA") if they are established in the UK, irrespective of where in the EEA they provide financial ISS. In return, the provision by UK firms of those financial ISS in other EEA States cannot be restricted in those States unless firms are conducting business in an area specifically excluded under Article 3(3) or if the relevant member state into which they are providing services has completed the "case by case" derogation process outlined in Article 3(4). The potential benefit of this is large: instead of having to meet the costs associated with meeting the regulatory requirements of all the

EEA states into which they provide services, ISS providers established in the UK will only need to meet the costs of being regulated by the FSA. The specific cost benefits will depend on the amount and nature of the business being conducted by the ISS provider with the EEA as well as effective and complete implementation of the ecd in other EEA states.

Costs

Financial Promotion Regime

5. Under the ecd, the government is required to alter the Financial Promotion regime established under the Financial Services and Markets Act 2000 for ISS providers established in the UK so as to extend the scope of the regime to promotions launched from the UK into other EEA states. This will bring additional costs for establishments in the UK launching promotions into EEA member states.

6. The Government has to make this change to meet its obligation to implement the ecd into UK law. Nonetheless, we believe that the additional cost burden will be small. Most ISS providers established in the UK engaged in financial promotion into other EEA states will already be authorised by the FSA. The additional cost for them as a result of implementation of the ecd will be the extension of FSA rules to promotions to which they previously did not apply.

7. There will also be an impact on unauthorised firms seeking to do one-off financial services transactions such as raise capital or undertake takeovers. Implementation will increase costs for UK establishments engaged in these outward financial promotions to EEA member states through the provision of an ISS service (primarily, over the internet) who are not already authorised by the FSA. Estimates of the cost of approval of a promotion range from a minimum of £25,000 for a small firm undertaking a basic promotion up to £500,000+ for a large firm engaged in a complex promotion.

8. In both cases the additional costs will be offset by the reduction in host-state regulation in the state/states into which the promotion is entering. Whether the net result will be a cost or a saving will depend, amongst other factors, on the number of countries to which a promotion is made: the greater the number of EEA countries to which a promotion is made, the greater the saving from having to comply only with UK requirements.

Impact on small and medium sized businesses

9. We do not believe that implementation of the ecd in the area of financial services will bring specific additional costs for small or medium sized businesses except in the area of financial promotion where the ecd requires the regime to be amended.

Consultation

10. The Government has held two public consultations on its proposals for implementing the ecd in the area of financial services. A majority of respondents have broadly welcomed these proposals, although some have raised specific concerns about implementation in a few areas. A summary of consultation responses will be made available shortly on the Treasury's website.

Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister:

Ruth Kelly

Economic Secretary to the Treasury