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**GREEN PAPER**

**on Financial Services Policy (2005-2010)**

(presented by the Commission)

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# **GREEN PAPER**

## **ON FINANCIAL SERVICES POLICY (2005-2010)**

(Text with EEA-relevance)

The overall objective of the Commission's financial services policy<sup>1</sup> over the next five years is :

- to consolidate progress towards an integrated, open, competitive, and economically efficient European financial market and to remove the remaining economically significant barriers;
- to foster a market where financial services and capital can circulate freely at the lowest possible cost throughout the EU - with adequate and effective levels of prudential control, financial stability and a high level of consumer protection;
- to implement, enforce and continuously evaluate the existing legislative framework, to deploy rigorously the better regulation agenda for any future initiatives, to enhance supervisory convergence and strengthen European influence in global financial markets.

This paper presents the preliminary views of the Commission for its financial services policy priorities for the next five years. It takes into account many convergent opinions expressed in the 2-year consultation process that started with the work of four expert groups, followed by wide public consultation<sup>2</sup>. Other parallel initiatives include the report on financial integration by the EU Financial Services Committee<sup>3</sup> and the Draft Report by the Economic and Monetary Affairs Committee of the European Parliament on the current state of integration of EU financial markets<sup>4</sup>.

**The Commission now seeks views on its initial ideas on the future of European financial services policy. Responses should be sent by 1 August 2005, to the following email address: [markt-consult-financialservices@cec.eu.int](mailto:markt-consult-financialservices@cec.eu.int).** Responses will be placed on the Commission's website – unless there is an explicit request to the contrary.

Comments and further preparatory work within the Commission will be taken into account for the determination of the **Final Policy Programme**, which will be presented in the form of a White Paper in **November 2005**.

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<sup>1</sup> As part of the Commission's overall strategic objectives 2005-2009 - see COM(2005) 12, 26.1.2005, Section 1.1, 2nd paragraph and COM(2005) 24, 2.2.2005, point 3.2.1.

<sup>2</sup> [http://europa.eu.int/comm/internal\\_market/en/finances/actionplan/stocktaking\\_en.htm](http://europa.eu.int/comm/internal_market/en/finances/actionplan/stocktaking_en.htm)

<sup>3</sup> Report for consideration by EU Finance Ministers on 2nd June 2004, only in limited circulation.

<sup>4</sup> [http://www.europarl.eu.int/meetdocs/2004\\_2009/documents/PR/553/553131/553131en.pdf](http://www.europarl.eu.int/meetdocs/2004_2009/documents/PR/553/553131/553131en.pdf)

## 1. KEY POLITICAL ORIENTATION

In the last six years there has been major progress towards an integrated European capital and financial services market. Most of the necessary rules outlined in the Financial Services Action Plan (FSAP) have been agreed on time and are now being put in place. European decision making and regulatory structures have become more rational and efficient as a result of the "Lamfalussy process"<sup>5</sup>. Continued systematic cooperation has developed between the European institutions and market participants. And, in the wake of the euro, political confidence in the integration process has increased.

The job, however, is not finished. A new phase now begins for the period 2005-2010, with a very different focus:

- consolidation of existing legislation, with few new initiatives;
- ensuring the effective transposition of European rules into national regulation and more rigorous enforcement by supervisory authorities;
- continuous ex-post evaluation whereby the Commission will monitor carefully the application of these rules in practice – and their impact on the European financial sector.

Member States, regulators and market participants must play their role. If needed, the Commission will not hesitate to propose to modify or even repeal measures that are not delivering the intended benefits. This approach is essential to ensure that the hard-won European regulatory framework will function optimally – for the benefit of market participants, more than 20 million European businesses and 450 million citizens, and thus for the European economy as a whole.

The agenda for the last six years was driven by the vision that deep, liquid, dynamic financial markets will ensure the efficient allocation and provision of capital and services throughout the European economy – from wholesale to retail – laying the foundation for higher long term growth and job creation across the economy. The watchwords for the FSAP legislative proposals were cross-border competition, market access, enhanced transparency, market integrity, financial stability and efficiency. Overall, FSAP legislation remained faithful to these guiding principles – and they are still valid today.

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<sup>5</sup> The Lamfalussy report, published on 15 February 2001, can be found on the Commission's website: [http://europa.eu.int/comm/internal\\_market/securities/lamfalussy/index\\_en.htm](http://europa.eu.int/comm/internal_market/securities/lamfalussy/index_en.htm); see also footnote 8 in Annex I.

The economic benefits of European financial integration (Annex I) are beyond doubt. This has also been recognised in the Lisbon strategy<sup>6</sup> – and confirmed by the Commission’s mid-term review of Lisbon with its strengthened emphasis on growth and jobs<sup>7</sup>.

Aligning national regulatory approaches to a common European regulatory system is challenging: it entails considerable “*ex-ante*” adjustment costs for national enforcement agencies and market participants. These transitional problems pose a challenge in themselves – particularly as they are mainly concentrated over a short period (2005-2007). However, concerns about these transitional costs should not obscure the broader economic benefits. The alternative is stark: fragmented and under-performing financial markets and/or a patchwork of national pools of liquidity subject to divergent, uncoordinated risk-management practices and a higher cost of capital. The FSAP has created an enabling legal framework which should allow issuers, investors and providers of financial services to transact on a pan-European level without undue legal impediment. The key, now, is to make it function well.

Today, economic and market evidence suggests that European financial integration is underway in many sectors: in the wholesale markets; in stock exchanges; in financial markets infrastructure, such as clearing and settlement. This has improved conditions for all users of financial services. A European market “reflex” is beginning to emerge, however, much remains to be done both in the above mentioned areas and other areas in retail and wholesale. For example, the area of retail distribution remains fragmented and some markets remain impenetrable. These barriers need to be carefully assessed, in particular to see whether they constitute significant economic impediments to the free flow of capital and financial services.

A well-functioning risk capital market is a strategically important element of promoting new and innovative firms, entrepreneurship, raising productivity and the sustainable rate of economic growth in Europe. Currently the European market for risk capital is much less effective than for instance the market in the US. Therefore, identifying the priorities for any further initiatives in this area is important.

A rigorous “better regulation” approach will be applied throughout: from policy conception, to open and transparent consultation at all levels, to establishing thorough and convincing economic impact assessments before launching a new proposal and to ex-post evaluation. This is crucial to reduce administrative costs for financial institutions and issuers and to

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<sup>6</sup> The Lisbon European Council of 23 and 24 March 2000 agreed on a new strategic EU goal for the next decade: to become the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion.

<sup>7</sup> Growth and jobs: A New Start for the Lisbon Strategy’, February 2005 - [http://europa.eu.int/growthandjobs/pdf/COM2005\\_024\\_en.pdf](http://europa.eu.int/growthandjobs/pdf/COM2005_024_en.pdf)

raise the competitiveness of the European financial industry.

These disciplines should also be applied by the European Parliament and the Council to avoid evidence-based Commission proposals being mushroomed into unnecessary, sapping complexity. In particular, Member States should avoid adding layer upon layer of regulatory additions that go beyond the Directives themselves – so-called “goldplating” - thus stifling the benefits of a single set of EU rules and adding unnecessary burden and cost to European industry<sup>8</sup>.

As before, there must be an evidence-based expectation that any new European proposal for financial services legislation and implementing rules will yield significant economic benefits in terms of efficiency and stability. A yardstick should be the extent to which measures facilitate cross-border business and enhance the competitiveness of Europe’s financial markets, while, at the same time, protecting internal stability.

The Commission’s approach will continue to build as much consensus as possible in any preparatory phase, working closely and transparently with Member States and the European Parliament, with EU supervisory networks (CEBS<sup>9</sup>, CEIOPS<sup>10</sup>, and CESR<sup>11</sup>), with the European Central Bank, market participants and more intensely in the future with consumer groups<sup>12</sup>. Regulatory philosophies differ among Member States – so the art of European legislation in these complex areas is to find the balance best serving Europe’s interest. Any legislation should respect the subsidiary and proportionality principles of the Treaty<sup>13</sup> and strengthen competition.

The important debate on European supervisory convergence now needs to be taken forward. The supervisory system must have the necessary instruments to make European financial services regulation work effectively and thus facilitate pan-European business. The outcome must ensure full democratic accountability to the Member States and European Parliament. In this context, the entry into force of the European Constitution<sup>14</sup> is important for the medium term continuity and sustainability of the Lamfalussy process<sup>15</sup>.

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<sup>8</sup> See Commission Recommendation on best practices for Member States’ transposition of EU legislation - SEC(2004) 918.

<sup>9</sup> Committee of European Banking Supervisors, established as per 1 January 2004.

<sup>10</sup> Committee of European Insurance and Occupational Pensions Supervisors, established as per 24 November 2003.

<sup>11</sup> Committee of European Securities Regulators, established as per 7 June 2001.

<sup>12</sup> The FIN-USE forum of financial services experts is already providing the Commission with valuable input from a user perspective.

<sup>13</sup> Where legislative solutions appear justified, these are enacted on an EU-wide basis only if local measures clearly demonstrated to have failed or to be impracticable; their effects should not go beyond those needed for the good functioning of the internal market.

<sup>14</sup> In particular (new) article I-36 that provides call-back rights to the European Parliament and to the Council for controlling delegated regulations adopted by the Commission.

<sup>15</sup> The ‘sunset clauses’ in the securities area come into effect from 2007 onwards. Under these clauses, delegated powers to the Commission to adopt implementing measures through comitology (level 2 of the Lamfalussy process) will expire, unless the Council and the

With the regulatory framework and supervisory structures largely in place, the Commission foresees that synergies with different policy areas – particularly competition and consumer policy - will grow over the next five years. Some sectoral enquiries in the financial services area have already been announced. The Commission would like market participants to play a more effective and pro-active role in consistently signalling clear infringements or anti-competitive behaviour from whatever source – first at national level and then to the Commission.

Other horizontal and complementary policy areas (corporate governance, company law reform, accounting, statutory auditing) are also of immense importance in building confidence and transparency in European financial markets. Although outside the scope of this Paper, work in these areas will progress in line with the agreed timetables<sup>16</sup> and the “*better regulation*” principle-based and simplification approach. Companies, accountants, auditors and other market participants must apply the highest ethical standards in their work. National supervisors must ensure they are effectively applied, also vis-à-vis off-shore financial centres. If not, market and political pressure for additional regulatory intervention in these and other domains will intensify. Currently, this issue is further reflected on in the revision of the 4th and 7th Company Law Directives on accounting standards. The objective is to strengthen disclosure when using entities established in off-shore financial centres.

The debate about the future governance, funding and political accountability of global standard-setting bodies, such as the International Accounting Standards Board, are of growing political importance. The Commission considers that public oversight of these structures must be strengthened, to ensure appropriate reflection of stakeholders, satisfactory transparency, due process and sustainable financing.

Looking outwards, Europe has a major strategic opportunity to influence the regulatory parameters of the emerging global financial market. That is why the deepening of the EU-US financial markets dialogue and strengthening financial relations with Japan, China and for instance India are so important (see 3.4). The Commission favours widening the agendas of these dialogues, making them more forward-looking and drawing more on market participants’ input. Further efforts to open third country financial markets will be pursued in the Doha trade round as well as in bilateral and regional trade agreements.

The Commission would be interested to hear from stakeholders:

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European Parliament explicitly agree to extend them (which will be a co-decision proposal by the Commission).

<sup>16</sup> The Corporate Governance and Company Law Action Plan; including actions on: IAS implementation; 8th Company Law Directive; acceptance of IAS in third country jurisdictions, such as the US; transparency of corporate governance structures; improving shareholder structures etc.

- whether they agree with the overall objectives for the Commission’s policy over the next five years;
- whether they agree with the key political orientation described above.

## 2. BETTER REGULATION, TRANSPOSITION, ENFORCEMENT AND CONTINUOUS EVALUATION

Improved economic performance and welfare creation will largely depend on the capability of European institutions, supervisory authorities and market participants to ensure that the existing rules are consistently applied and enforced - so that best practice becomes the norm (Annex I, Section II). This way a level playing field is created – with consistent and accurate interpretations of Community law – avoiding legal uncertainties and ambiguities. This means enforcement mechanisms need to be strengthened and interconnected across the Member States, *inter alia*, via the European supervisory networks. This shared responsibility is a major challenge in a European Union of 25 Member States – with further enlargements in the pipeline.

The priorities are:

- continued application of open and transparent policy making with extensive use of consultation mechanisms at all levels;
- simplifying and consolidating all relevant (European and national) financial services rules<sup>17</sup>;
- converging standards and practices at supervisory level, while respecting political accountability and current institutional boundaries;
- working with Member States to improve transposition and to ensure consistent implementation;
- evaluation whether the existing directives and regulations are delivering the expected economic benefits and repealing measures that do not pass this test; and
- ensuring proper implementation and enforcement, if needed, by infringement procedures building on existing legislation and case law.

The Commission would be interested to hear from stakeholders:

- whether they agree with the priority measures identified; and
- which additional measures should be taken to foster consistent

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<sup>17</sup> A few pilots for simplification might be chosen in the coming years. Launching a feasibility study might be helpful to find out if over time all rules can be fused in one body of consistent law (some sort of ‘Financial services rulebook’).

### 3. CONSOLIDATION OF FINANCIAL SERVICES LEGISLATION OVER THE 2005-2010 PERIOD

#### 3.1. FINISH REMAINING MEASURES

##### ONGOING LEGISLATION AND MEASURES IN PREPARATION

The first priority of the next twelve months is to complete the unfinished business of the remaining elements in the negotiation phase at the European Parliament and the Council and of the key measures now under preparation by the Commission.

The latter are a (possible) directive on post-trade financial services (clearing and settlement), the new Insurance Solvency framework and a (possible) legislative proposal on payments (see Annex II). This preparation involves both thorough impact assessments and wide stakeholders' consultations.

##### AREAS WHERE THE COMMISSION MAY DECIDE NOT TO MAKE A PROPOSAL

The Commission is committed to act only where European initiatives bring clear economic benefits to industry, markets and consumers. Concretely, the Commission is currently looking into the areas of **rating agencies** and **financial analysts**, where – after having received the advice of CESR and CEBS – a decision should be made if additional legislation is needed at this stage or if the current provisions in the Market Abuse Directive as well as self-regulation<sup>18</sup> and monitoring mechanisms could be sufficient. It is already clear that the Commission will not propose any implementing measures under the **Take Over Bids Directive**.

However, if the Commission would decide not to propose legislation in these and other areas, the Commission would not hesitate to revisit this position, should future market developments suggest that robust intervention is needed.

##### AREAS WHERE THE COMMISSION MAY RECONSIDER ITS PROPOSAL

Following EU Member States agreement to **The Hague Convention** (a multilateral treaty on conflicts of law for securities held with an intermediary<sup>19</sup>), the Commission made a proposal for signature but recently some Member States and the ECB have expressed concerns with the Convention. The Commission will prepare, by end 2005, a legal assessment evaluating the concerns raised and then decide whether

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<sup>18</sup> For instance the Code of the International Organisation of Securities Commissions (IOSCO).

<sup>19</sup> A uniform legal formula for determining proprietary rights is considered particularly useful in cases where securities are held through a chain of financial intermediaries in different countries.

changes are needed to the current signature proposal or not.

### **3.2. EFFICIENT AND EFFECTIVE SUPERVISION**

As European financial integration progresses, new challenges for supervisors are emerging. Monitoring cross-border risk is becoming more critical and although integration will strengthen overall stability, the potential for ‘spill-over effects’ such as a system failure affecting several financial markets and/or groups that operate on an EU-wide basis will increase. The Commission believes in tackling these challenges through an evolutionary, bottom up approach (Annex I, Section III).

### **3.3. ENABLING CROSS-BORDER INVESTMENT AND COMPETITION**

Consolidation in the financial services sector should be driven by the market. At the same time, financial soundness and stability of the financial system must be ensured in some areas. The costs and barriers to cross-border transactions constitute a formidable obstacle to cross-border investment and economic rationalisation within Europe. The Commission has identified in a preliminary report the potential barriers and has invited stakeholders to come forward with – in their view – the most inhibiting obstacles<sup>20</sup>. Eliminating or at least reducing these unjustified barriers will strengthen the competitiveness of the sector and of the economy at large – and foster growth and job creation (Annex I, Section IV).

### **3.4. THE EXTERNAL DIMENSION**

The Commission will monitor carefully that candidate countries fulfil their responsibilities in the financial services area. Furthermore, enhancing European influence on the global stage and ensuring the global competitiveness of the European financial sector should remain a priority. Financial services are a global business - developments in one jurisdiction have an impact on others. Annex I, Section V outlines the (regulatory) objectives identified and the good progress made in building open, *ex-ante* regulatory dialogues with the US and China. The Commission would also like to deepen financial relations with other countries, like Japan, and, if possible, also with India over the next five years

The Commission would be interested to learn from stakeholders:

- whether they agree with the identified measures where the Commission might decide to take no action, or if there are other concrete areas where the Commission should not bring forward proposals presently in the pipeline or, indeed, areas where the Commission should consider withdrawing;
- their assessment if the existing regulatory and supervisory framework is sufficient to tackle the supervisory challenges in the years ahead, what are the gaps and how these can be filled most

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<sup>20</sup> [http://europa.eu.int/comm/internal\\_market/finances/cross-sector/index\\_en.htm#obstacles](http://europa.eu.int/comm/internal_market/finances/cross-sector/index_en.htm#obstacles)

effectively;

- what are the objectives, sectors to be covered and the priority areas in regulatory and cooperative activities on a global scale.

#### 4. POSSIBLE, TARGETED NEW INITIATIVES

In line with the opinions expressed in the two-year consultation process that started with the work of four expert groups, the Commission has identified two clear policy areas where initiatives might bring benefits to the European economy: **asset management** (Annex I, Section VI) and **retail financial services**. Work in these areas will be bottom up, consultative, and working with the grain of the market.

The post-FSAP stocktaking process identified the market for retail financial services as an area requiring further attention (Annex I, Section VII). While significant progress has been achieved to integrate financial markets, retail financial services markets – *i.e.* financial services offered to consumers, remain deeply fragmented.

The role of the Commission is to facilitate the provision of retail financial services in Europe. In cross-border service provision, four distribution channels can be identified: (i) a consumer purchases the service from a provider in another Member State by travelling to that Member State; (ii) a firm markets/sells to consumers in another Member State without establishing; (iii) a firm establishes in more than one Member State and adapts its offerings to local markets; and (iv) services being designed on a pan-European basis, even if delivered locally.

Although the approach of creating pan-European passports for businesses and consumers seems to be the most beneficial one, possible alternative regimes, such as so-called “26<sup>th</sup> regimes” for those operators and consumers who want to be active across borders, leaving the 25 sets of national rules untouched, are currently debated. The benefits of such “26<sup>th</sup> regimes” remain to be proven and reaching agreement on optional European standards designed only for certain products will be difficult. However, the Commission takes note of the current debate and will respond to the call to explore such 26<sup>th</sup> regimes further, by launching a feasibility study, *e.g.* in the areas of simple (term-life) insurance and savings products.

The Commission thus proposes to establish Forum groups for specific retail products, consisting of experts in the field, representing industry and consumer interests, to identify any barriers and examine possible solutions. This work will be supported by extensive research.

#### AREAS OF POSSIBLE FUTURE ACTION

Mortgage credit is one area where further retail integration might be beneficial – while the number of products in the market should not be limited; a separate Green Paper, planned for summer 2005, will address

the 48 recommendations coming from the Mortgage Credit Forum Group's report. Concrete initiatives could be announced – after thorough consultation - earliest in 2006.

Based on the conclusions coming from the expert groups and the views expressed in the public consultation, the following areas might merit further consideration as well:

- **codification and possibly simplification of existing rules on information requirements**, in particular with a view to ensuring consistency and coherence between different texts<sup>21</sup>;
- **financial mediation**, in particular by allowing cross-border service provision by knowledgeable and reliable intermediaries, while applying full transparency on fees and relationships with providers. Work has already been done in this area<sup>22</sup>. However, given developments in products and the structure of financial providers, the need for further alignment of rules on conduct of business, sales advice and disclosure should be examined;
- **bank accounts**: in particular looking into obstacles to opening accounts cross-border, as well as issues regarding their handling, portability, transferability and closure. There appear to be particular problems associated with, e.g. non-residency and identification requirements.

The Commission would be interested to learn from stakeholders:

- whether they agree with the new identified priority areas;
- what are the (dis)advantages of the various models for cross-border provision of services, whether there is a business case for developing a 26th regime, and which business lines might benefit;
- how to enable consumers to deal more effectively with financial products and whether this means more professional and independent advice, improved education or financial literacy training are needed;
- whether they agree with the issues identified in the above list of retail products, or if they would suggest other areas where additional action at EU level could be beneficial.

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<sup>21</sup> The Commission is developing a Common Frame of Reference as a tool to use in improving the coherence of European contract law.

<sup>22</sup> Under the Insurance mediation Directive and in the Markets in Financial Instruments Directive.

## Annex I, Section I - Economic benefits from financial integration

The financial sector plays a key role in the economy by allocating economic resources efficiently in time and space and thereby enabling real-sector activity to expand and develop optimally. In playing this role, a well-functioning financial sector should provide the means to:

- execute financial securities transactions on a cost-effective and safe basis through the appropriate mechanisms for trading, clearing, settlement and custody;
- pool investor resources, subdivide shares in available investment opportunities, and spread the risk, thereby overcoming issues of scale in the resource allocation process;
- rapidly be able to finance and respond to new business opportunities;
- price and manage effectively the risks related to financial transactions;
- reflect available information efficiently in prices so as to overcome problems of co-ordination in decentralised decision making;
- meet consumers' needs at reasonable cost; and
- address possible incentive problems created by the existence of information asymmetries and by the principal-agent relationship in the financial intermediation process.

So that:

- small and medium sized entities (vital for EU job-creation) can access a wider availability of risk capital and more innovative and lower cost finance to fuel their growth;
- larger companies profit from an overall reduction in the cost of capital and a wider range of financial products;
- the public sector can meet its financing needs at lower cost;
- consumers benefit from improved returns on investment funds or life products, or reduced borrowing costs; to access a wider choice of investment opportunities and cheaper and more reliable ways of paying for goods and services;
- financial stability can improve and the European market becomes more attractiveness for foreign capital inflows; and
- the society as a whole to help finance the major structural economic challenge Europe faces – namely its long run pension deficit – by introducing more efficient pan-European markets for long-term savings products.

To the extent that the financial sector is constrained in the performance of these various functions, there is a consequent cost in terms of sub-optimal economic performance and welfare loss.

Within the European Union, the financial sectors of the Member States have evolved to reflect specific national conditions and preferences. While these systems are generally efficient from a national perspective, they are much less so when viewed from the perspective of a progressively integrating European economy. Over time, a divergence has emerged at European level between the real sector which increasingly operates on a cross-border basis and a still highly fragmented financial sector. The degree of fragmentation has been such that the European financial sector cannot function efficiently and therefore acts as a drag on the overall performance of the European economy. The costs and risks associated with cross-border financial transactions are unnecessarily high, thereby discouraging the conduct of financial activity on a pan-European basis. The result has been an inefficient allocation of economic resources due to unexploited scale/scope economies, sub-optimal risk management, inefficient pricing and reduced opportunities for an optimal distribution of investment/consumption over time.

In light of these inefficiencies, financial integration has been a European policy priority since 1998 and now forms an integral part of the Lisbon strategy. The underlying economic rationale is that financial integration will enhance the level of financial development throughout Europe and thus contribute positively to the performance of the European economy. A more efficiently functioning economy will mean more jobs as new business opportunities open up. The largest benefits could accrue to those Member States with the least developed financial markets – facilitating over time economic convergence within the Union.

Given their growth potential and their share of GDP, financial service sectors have a direct and decisive impact on the aggregate competitiveness of modern economies. For example, the key differences in economic performance between Europe and the United States, with US productivity growth showing a strong acceleration during the second half of the 1990s, can be found in a limited number of intensive ICT-using services which account for much of the overall US-EU gap in productivity growth since 1995. More specifically, the US showed rapid productivity expansion in securities trading<sup>23</sup>. According to a study by McKinsey Global Institute, the introduction of pro-competitive regulations played a significant role in this remarkable performance. Very recently both the Sapir report<sup>24</sup> and the Kok report<sup>25</sup> have stressed the importance of completing the single market for financial services because of the role that financial services play both on the supply and on the demand side of the different national economies.

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<sup>23</sup> Bart van Ark, Robert Inklaar, Robert H. McGuckin “Changing Gear” Productivity, ICT and Service Industries: Europe and the United States”, Paper for ZEW Conference 2002 on Economics of Information and Communication Technologies, June 24-25, Mannheim.

<sup>24</sup> Sapir et al. “An Agenda for a growing Europe”, Oxford University Press, March 2004.

<sup>25</sup> Kok et al. “Facing the challenge: the Lisbon strategy for growth and employment”, Report to the Commission, November 2004

Despite the fact that it will take a considerable time before the overall financial and economic impact of the FSAP measures can be assessed directly, the case for creating integrated, open and efficient EU capital and financial services markets remains as strong as ever. This view is supported by the economic literature.

**Consecutive studies calculated the economic benefits of financial integration:**

- the Cecchini report of 1988 estimated that the integration of the financial markets of 8 Member States would increase the value-added of their financial services by 0.7% of GDP<sup>26</sup>;
- the London Economics study<sup>27</sup> (end of 2002) focused on the benefits from integration by calculating the static efficiency gains from deeper and more liquid equity and bond markets in EU15. The study concluded that fully integrated markets would lower the cost of capital for companies by 0.5% and increase the GDP-level over time by 1.1%;
- the CEPR study<sup>28</sup> (end 2002) looked at the relationship between financial integration and growth from a micro-economic point of view. The study concludes that, in a scenario in which manufacturing companies would have the same access to finance as the US companies, value-added growth in European manufacturing is estimated to increase by 0.75-0.94% on a durable basis.

Quantifying the costs and benefits of financial integration is very difficult and is subject to significant data, statistical and model uncertainty. Accordingly, the results of these studies can be considered only as indicative of the potential benefits of European financial integration. Nevertheless, the results of these and other studies underscore the validity of European policy on financial integration. All future proposed regulation will be accompanied by an impact assessment aimed at showing the economic benefits of the proposed measures.

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<sup>26</sup> This estimate was based on first round effects only and did not take dynamic effects into account, which were expected to have generated a higher figure.

<sup>27</sup> London Economics (2002), "Quantification of the Macroeconomic Impact of Integration of EU Financial Markets" Available in the Commission web-site at: [http://europa.eu.int/comm/internal\\_market/en/finances/mobil/overview/summary-londonecon\\_en.pdf](http://europa.eu.int/comm/internal_market/en/finances/mobil/overview/summary-londonecon_en.pdf).

<sup>28</sup> Giannetti M., L.Guiso, T. Jappelli, M. Padula and M. Pagano (2002), "Financial market Integration, Corporate Financing and Growth", DG ECFIN Economic Paper N° 179. available at: [http://europa.eu.int/comm/economy\\_finance/publications/economic\\_papers/economicpapers179\\_en.htm](http://europa.eu.int/comm/economy_finance/publications/economic_papers/economicpapers179_en.htm).

## **Annex I, Section II - Better regulation, transposition, enforcement and continuous evaluation**

The benefits from financial integration can only be delivered if the European institutions, supervisory authorities and market participants can ensure that the existing rules are consistently applied and enforced. The Commission's priority measures to make this happen are outlined below.

### **Preparation of initiatives.**

#### ***Open and transparent policy making***

The Commission will continue to apply the most open, transparent and evidence-based policy-making in line with the Lamfalussy process. Thorough and wide consultation and economic impact assessments will continue to ensure that, where legislation is necessary, sound rules will be drawn up with clear and demonstrable added-value for Europe's markets and consumers. The Commission favours publishing all responses to open consultations. Summaries of consultation procedures will be drawn up by the Commission and published. Responses to the recent public consultation on the Commission's working paper<sup>29</sup> evaluating the Lamfalussy process<sup>30</sup>, strongly endorsed the Commission's general approach.

#### ***Simplification***

Although the Commission has tried to keep the FSAP legislative framework as simple as possible, there is room for improvement. Simplification and consolidation of the existing rules (codification) is a continuous objective and will be factored in when preparing any new piece of legislation.

#### ***Legal coherence***

A robust and clear legal framework is necessary for the efficient operation of both financial market participants and the public authorities responsible for regulation and supervision. The Community framework of law for the European financial markets and services is now highly developed, increasing cross-border activity and integration. New market practices can sometimes raise uncertainties or discussions as to how the existing law will apply or as to how it should develop. The Commission has already put in place arrangements to identify and analyse these areas. For example, in January 2005 the Commission launched the Legal Certainty Group dealing with cross-border securities rights and transfers. In conformity with its aim of

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<sup>29</sup> See "The application of the Lamfalussy process to EU securities markets legislation: a preliminary assessment by the Commission services" - SEC(2004) 1459.

<sup>30</sup> European regulatory and supervisory process via a four-level approach: (1) framework legislation adopted in co-decision (between Council and European Parliament) at "level-1", concentrating on the core political principles; (2) "level-2" implementing measures to fill in the details of "level-1" legislation subject to precise constraints fixed in that legislation; (3) day-to-day cooperation by national supervisors and regulators to ensure consistent implementation and enforcement; and (4) more effective enforcement of Community law.

promoting better regulation, the Commission will consider whether it should encourage more actions in this domain.

Full co-operation among the supervisory committees (CEBS, CEIOPS and CESR) is needed to ensure consistent application of European rules across the board. Also, further work on convergence of reporting, organisational and other requirements for businesses will help create homogenous business environments throughout the Union. Cooperation at level 3 must take place in a carefully modulated, open and transparent environment that fully respects institutional boundaries and the need for political accountability.

The Commission intends to carry out an exercise to read across the connected (existing and proposed) directives to ensure consistency and internal coherence of terminology and effect<sup>31</sup>. Launching a feasibility study in the securities area might be helpful to find out if over time all rules (at European, and also national level) can be fused in one body of consistent law, a “*Financial services rulebook*”. Some texts could be simplified, or even repealed; a number of reviews will be carried out (see below). If needed, changes to the legislation could be proposed – with the flexibility of the Lamfalussy process, this could be achieved in reasonable time.

### **Transposition**

Regrettably, the rate of transposition by Member States within the agreed deadlines is worsening<sup>32</sup> (for example in the transposition of the Market Abuse Directive). What can be done to improve the situation? The following actions could help.

#### ***Renewed political commitment***

Member States should demonstrate their commitment by providing clear and detailed transposition tables - preferably in one of the working languages of the Commission<sup>33</sup>. The Commission will enhance monitoring and control. To give visibility to the state of transposition, the Commission will be bringing forward an on-line FSAP transposition matrix – showing which texts have been implemented by the Member States, when and how, with hyper links to the Member States’ own texts. Where available, transposition tables will also be provided. A special chapter in the Internal Market Scoreboard<sup>34</sup>, planned for July 2005, will be devoted to this.

#### ***Realistic deadlines for transposition***

Allocating sufficient time to Member States and market participants to apply Community rules is important. In the future, more care is needed to work out the

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<sup>31</sup> See ‘European Contract Law and the revision of the acquis: the way forward’ - COM(2004) 651 - for an explanation of the development and role of the Common Frame of Reference in reviewing the contract law acquis.

<sup>32</sup> An overview of transposition deficits will be put on the Commission’s website, see: [http://europa.eu.int/comm/internal\\_market/en/finances/actionplan](http://europa.eu.int/comm/internal_market/en/finances/actionplan).

<sup>33</sup> See “Recommendation from the Commission on the transposition into national law of Directives affecting the Internal Market - SEC(2004) 918, 12.7.2004 - suggesting that correlation tables should be attached to the notification letter.

<sup>34</sup> [http://europa.eu.int/comm/internal\\_market](http://europa.eu.int/comm/internal_market)

necessary time for implementation of Directives and the implementing measures. The Markets in Financial Instruments Directive is an example where the deadline for transposition needed to be extended after adoption<sup>35</sup> - something that should be avoided in the future.

### ***Transposition workshops***

A continuation of transposition workshops with Member States and European regulators to iron out, *ex-ante*, the main problems by providing explanatory guidance to the Member States, regulators and markets if needed, while fully respecting the role of the European Court of Justice. The Member States have a duty under the Treaties<sup>36</sup> to implement and apply Community law. However, the Commission – as guardian of the Treaties – will remain vigilant in addressing any shortcomings and will launch infringement proceedings swiftly if this obligation is not carried out properly. At the same time, market participants and regulators should help the Commission identify any flagrant failures and address any shortcomings to national courts.

The Lamfalussy arrangements should also play an important role in the continuous monitoring of consistent transposition and effective enforcement. Peer group reviews, benchmarking and efficient mediation mechanisms within the level of the supervisory networks could help find agreement on implementation/enforcement problems and help raise standards and best practises. Good work has already been done by CESR in a number of areas (e.g. transitional provisions for UCITS III).

### ***Mediation and alternative dispute resolving***

However, at the same time, Europe needs to strengthen its enforcement mechanisms further – to ensure legal consistency and predictability. Mediation and alternative dispute resolution schemes, such as the already existing SOLVIT and FIN-NET networks<sup>37</sup>, offer considerable potential. Other, additional complaints and mediation procedures – in particular within the supervisory committees (Lamfalussy level 3) need to be developed and could be very effective.

CESR's recent paper<sup>38</sup> illustrates a number of urgent day-to-day problems that CESR thinks could arise under Directives currently being agreed and implemented in the securities sector (e.g. how to supervise the conduct of business rules of an intermediary organised on a trans-national basis, with branches in several Member States; or how to apply a particular International Accounting and Financial Reporting Standard to a market operation). Similar problems could arise in other sectors, such as banking. For example, a branch could have a significant impact on financial stability in the host Member State – where the branch represents a major player – while being much less significant in size in the home Member State where it is supervised. Non-binding mediation is one idea – but further reflection is needed within

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<sup>35</sup> The Commission came forward with a proposal for a one year extension – to be agreed upon by Council and European Parliament.

<sup>36</sup> EC Article 10.

<sup>37</sup> [http://europa.eu.int/comm/internal\\_market](http://europa.eu.int/comm/internal_market)

<sup>38</sup> [http://www.cesr-eu.org/consultation\\_details.php?id=48](http://www.cesr-eu.org/consultation_details.php?id=48)

current institutional boundaries. Similar pan-European enforcement issues arise in the area of audit oversight.

Whatever alternative dispute solving mechanisms are developed, they cannot be a substitute for ultimate proceedings before the European Court of Justice.

### **Ex-post evaluation**

While consistent transposition and enforcement of European legislation is key in creating the benefits of a level playing-field, the more fundamental question as to whether the rules actually achieve what they were meant to achieve must be addressed. The Commission will continue to report on an annual basis on the state of financial integration<sup>39</sup>, also addressing competitive structures in Europe, the efficiency gains of integration and related financial stability issues.

With the FSAP having reached its closing chapter, the logical next step is to evaluate its impact on financial markets and institutions as well as on the consumers and users. *Ex-post* evaluation of the FSAP and of all new legislative measures will in the future be a top priority for the Commission. The Commission plans to carry out a full evaluation of the FSAP in the course of 2006-2008, when all measures are implemented and the empirical and possibly the first economic effects start to be measurable<sup>40</sup>. The Commission will also carry out a number of reviews mandated by legislation adopted under the FSAP - e.g. on large exposures, own funds, commodities dealers, regulated markets and regarding the Financial Conglomerates, Insurance Groups and E-money Directives -, with a view to achieving greater coherence and more effective supervisory tools.

Not all measures need to deliver direct economic benefits. Measures can be needed to improve consumer protection, strengthen financial stability *etc.* However, if – over time – careful assessment and analysis reveal that specific legal texts have not worked – and will not produce their desired effect in the years to come – they will be modified or even repealed entirely. The Commission would be interested to learn from stakeholders which measures could be repealed and why.

Moreover, the Inter-institutional Monitoring Group<sup>41</sup> has so far proved a useful, independent mechanism for evaluating progress on achieving the objectives of the Lamfalussy report. A new Group has recently been furnished with a mandate to provide annual reports until the end of 2007. The mandate has been expanded, in line with the extension of the Lamfalussy process, to cover banking, insurance and occupational pensions as well as securities law.

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<sup>39</sup> [http://www.europa.eu.int/comm/internal\\_market/finances/docs/cross-sector/fin-integration/sec-2004-559\\_en.pdf](http://www.europa.eu.int/comm/internal_market/finances/docs/cross-sector/fin-integration/sec-2004-559_en.pdf). Each year's report will focus on specific issues; in 2005 these issues will be reflected in special features on financial consolidation, retail financial services and new Member States.

<sup>40</sup> This exercise will require careful preparation and fine-tuned calibration. To that end, the Commission envisages the organisation of a workshop with economic experts in mid-2006.

<sup>41</sup> Composed of 6 people, made up of 2 representatives nominated by the European Parliament, Council and the Commission respectively.

### **Challenges**

Cross-border penetration of financial services and capital markets in Europe is increasing. Delivering efficient and effective supervision remains a key issue for the further development of the Single Market for financial services in Europe. The Economic and Monetary Union (EMU) and the FSAP, almost complete, have acted as catalysts for change. This poses **challenges** for supervisory systems, which remain nationally-rooted.

Financial systems have increased their interoperability and become more integrated, providing services across borders. Large firms have shifted from country-based structures to structures focused more on business lines with centralised management functions. There is demand for supervisory arrangements that better reflect the way in which risk is managed and business is done. In the integrating European market, effective supervisory cooperation is essential, both in terms of day-to-day supervision and in the event of a crisis. More consistency between regulators and supervisors is important to avoid market uncertainty. Firms are demanding more streamlined and less costly cross-border and cross-sectoral supervisory arrangements. Concerns exist about the lack of equivalent powers and tools in exercising European supervisory functions.

### **A three-step, evolutionary approach**

Rushing into a debate on a future supervisory model for Europe without first laying down the necessary groundwork would be counter-productive and not deliver the desired results. Looking ahead at supervisory developments over the 2005-2010 horizon, an evolutionary approach is needed that strikes the right balance between ensuring effective supervision and financial stability, and minimising the regulatory burden for firms, systems and markets. The Commission proposes the following three steps:

#### **Step 1: Agreement on overall policy objectives**

The Commission's **policy objectives** for the coming five-year period are two-fold:

- to advance the **Lisbon agenda** by enhancing the **competitiveness** of EU financial markets and institutions. To the extent possible, activities should be subject to the same supervisory requirements both on a cross-border and cross-sectoral basis. All Member States must ensure in their implementation processes that their supervisors have the necessary powers to supervise and cooperate as required in the Directives. Avoiding unnecessary duplication in regulation and supervision will reduce industry burdens and foster expansion of cross-border financial services;
- to maintain the **highest, most up-to-date standards of regulation, oversight and supervision** for EU financial institutions, systems and markets to ensure financial stability, market integrity and consumer protection. Supervisory requirements should accurately reflect the risks run in

the market while converged supervisory practices and powers are crucial to ensure a level playing field and to avoid regulatory arbitrage.

## **Step 2: Maximise current framework, identify gaps and develop existing tools**

Convergence of supervisory practices in all financial sectors is one of the key functions of the recently established Lamfalussy process. The second Lamfalussy review expected in 2007 is a milestone in this regard. Existing supervisory tools and the potential of CEBS, CEIOPS, and CESR should be exploited to the maximum extent. All possibilities to cooperate under the existing framework should be pursued, within the contours of existing institutional boundaries and in full respect of ensuring democratic accountability. Factual evidence needs to be gathered to see whether and where there are difficulties in day-to-day supervision in the various sectors, the efficiency of current supervisory networks should be assessed and gaps effectively filled. Particular attention should be paid to cross-sectoral issues, by providing greater clarity to the roles and responsibilities of supervisors and through convergence of supervisory practices. In addition, a number of practical features could be developed to help improve supervision in European financial markets and to enhance cross-border regulatory and supervisory cooperation, e.g. common reporting templates, effective dispute settlement procedures etc. Future legislative proposals (e.g. post-trade and insurance solvency) will need to anticipate specific solutions for supervisory cooperation. More consolidated supervision is a legitimate demand from industry. However, this should be a long-term objective. We should give the new supervisory committees a few years before they deliver their full potential, instead of rushing into a more integrated supervisory system at a time when markets are not yet really integrated. Targeted EU-level action may be needed to underpin supervisory cooperation in the following **three strands**:

**(i) Removing inconsistencies within and between Directives, paying particular attention to cross-sectoral issues.** The Commission will review overlapping, conflicting or outdated supervisory requirements in the directives, e.g. whether exceptions to the home country prudential control principle are still justified. Regulation should set the ground rules for an environment that allows well-run firms to succeed without encountering unnecessary supervisory barriers. Present and programmed Directives could create overlapping or conflicting supervisory requirements (e.g. Financial Conglomerates, Insurance Groups and future Solvency Directives). Working with stakeholders, an ongoing cross-sector review of supervisory approaches will be carried out and any necessary adjustments made to ensure coherence, clarity and supervisory efficiency. However, changes should only be considered after sufficient practical experience and after having maximised the current supervisory potential.

**(ii) Greater clarity in the roles and responsibilities of supervisors.** Home country control remains the core concept for supervision in Europe. The role of supervisors is now slowly starting to follow the way in which firms organise and manage themselves. In banking, for example, the Capital Requirements Directive proposes in some areas decision-making powers for supervisors that apply also to subsidiaries in other Member States, thus avoiding multiple decisions and reducing burdens. Before extending these powers to other areas, the respective roles and responsibilities of supervisors need to be reinforced and a number of key underlying and interrelated

issues should be addressed (liquidity, crisis management, lender of last resort, deposit guarantees, and winding-up and bankruptcy proceedings). In insurance and securities markets, similar issues may require attention. As a matter of priority, work will commence with all interested parties to determine how to optimally address the nature, location and supervision of risks in cross-border operations.

**(iii) Convergence of supervisory practices.** The three supervisory committees (CESR, CEBS and CEIOPS) are focusing on promoting cooperation and seeking similar responses to similar issues (e.g. developing common reporting rules and formats to reduce regulatory costs, peer pressure/mediation, and sharing information and data). In doing so, any new differences between supervisory powers and approaches which could impede proper market functioning should be identified and addressed. Possible solutions are: a review of divergences stemming from national legislation; enhanced cooperation through Memoranda of Understanding; coordinated or joint investigations; or coordinated group supervision. This should be done in a transparent way that respects institutional boundaries and democratic accountability. All tools underpinning supervisory cooperation, including non-binding standards agreed between supervisors, must of course be fully compatible with binding European legislation and must not prejudice the political process.

### **Step 3: Development of new structures**

New structures should only be developed if all possibilities for cooperation under the current framework have been exhausted and if there is compelling evidence that, once fully implemented and developed, this framework cannot fulfil its financial stability and integration objectives or meet the requirements of European legislation.

### ***Background***

The Informal ECOFIN Council in September 2004 in Scheveningen (NL) discussed findings that suggest that cross-border acquisitions in Europe are less common in the financial sector (particularly banking) than in other sectors of the economy.

Eliminating or at least reducing unjustified barriers to cross-border investment and economic rationalisation within Europe will strengthen the competitiveness of the economy at large – and foster growth and job creation. However, consolidation is not an end in itself, and takeovers and mergers will not automatically produce improved economic performance. Rather, market-driven consolidation will enable European financial service providers to reach their effective potential and compete internationally – via economies of scale and scope.

### ***Possible explanations***

There are a number of possible explanations why in the financial sector cross-border acquisitions in Europe are less common, e.g. factors related to structural, cultural, language and taxation issues, which weaken the business case for consolidation. It was also suggested that inappropriate intervention by national supervisory authorities and political interference are reasons for banks' failure to consolidate significantly on a cross-border basis. This debate is not about the overall level of 'foreign' participation in individual Member States' financial sectors, which depends on a range of factors (such as profitability, cost effectiveness, etc.). It is rather about whether or not national supervisors use solely prudential criteria to assess the merits or demerits of a particular merger or acquisition. Supervision should not be misused for protectionist purposes.

### ***The Commission's approach***

In January 2005, the Commission issued a call for advice to CEBS notably on the criteria used by national supervisory authorities when reviewing acquisitions of qualifying shareholdings (cf. Article 16 of Directive 2000/12/EC). Many of these issues are also pertinent for other financial sectors, where similar provisions exist. In the insurance sector, the Commission issued a call for advice to CEIOPS on the "fit and proper" concept in December 2004. In the UCITS area, the industry is calling for cross-border mergers to be facilitated in order to increase size and reap economics of scale. Transparency in the bond market and how government debt markets function have also been raised as areas where integration would be beneficial. Cross-sectoral consistency will need to be checked regarding these outcomes.

In addition, the Commission will analyse the reasons for the low level of cross-border consolidation to date and investigate whether there are unjustified obstacles hampering the proper functioning of an internal market. In parallel, the Commission

will review the application of the Treaty-based freedom of capital movements (Articles 56-60) in the area of cross-border bank mergers and acquisitions<sup>42</sup>.

In particular regarding its ongoing review of Article 16 of the Banking Directive, the Commission considers that, at the very least, more clarity, transparency and disclosure are needed, based on a set of well-defined common prudential criteria. Supervisors ought to make explicit the criteria they apply when reviewing qualifying shareholdings and their decisions should be made within a reasonable timeframe.

Supplementary action through competition policy is an important complement to financial integration measures. In line with its proactive approach to enforcing antitrust rules, the Commission will undertake sectoral enquiries in the areas of retail financial services and business insurance, with increasing focus on market monitoring. The objective will be to implement selective competition screening, and in particular to enhance competition in certain European retail financial services markets. Special attention will be given to the identification of obstacles to the provision of cross-border services and entry barriers, both in the form of regulation as well as “typical” antitrust issues.

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<sup>42</sup> The Commission will present a factual report on obstacles to the ECOFIN Council by September 2005 along with recommendations stemming from its review of Article 16 of the Banking Directive. It also intends to prepare a Communication on the application of the Treaties based freedom of capital movements this summer.

### **Future enlargement and neighbourhood policy**

The Commission will monitor carefully that candidate countries fulfil their responsibilities in the financial services area and assess whether they are ready to play their role as full members of the Union. As with previous accessions to the EU, the Commission intends to take a pro-active approach by asking candidate countries to apply existing rules already before their accession.

Regarding the countries with which Partnership and Cooperation Agreements are in force and which fall within the framework of the European Neighbourhood policy, the Commission will seek to ensure adherence to the main principles of the European rules.

### **Global dimension**

Enhancing European influence on the global stage and ensuring the global competitiveness of the European financial sector should remain a priority. Financial services are a global business - developments in one jurisdiction have an impact on others.

Three regulatory objectives can be identified:

- (1) the need to remove barriers to open and competitive financial services markets worldwide and to ensure market access, based, where appropriate, on equivalent regulatory approaches;
- (2) the need to manage major structural changes on the global stage – seeking cooperative solutions where possible;
- (3) the need to protect the international financial system from instability, fraud and financial crime.

Good progress has been made in building open, *ex-ante* regulatory dialogues - exchanging information, identifying potential regulatory problems upstream and seeking mutually acceptable solutions. With the United States, a number of important regulatory understandings (e.g. on the cooperative model for the implementation of the Sarbanes Oxley Act and on financial conglomerates) have helped reduce transatlantic friction. Working as far upstream of the political process as possible to converge regulatory and supervisory principles minimises compliance and adjustment costs in the different jurisdictions.

Recently, the Commission has had a first successful macro-economic and financial sector regulatory dialogue with China – which will be repeated in the near future. A number of important areas for cooperation and regulatory dialogue in the financial services area have been identified, such as accounting and the experience with the Lamfalussy regulatory model. The Commission also would like to deepen financial relations with Japan, and, if possible, also with India over the next five years.

The Commission is committed to an ambitious opening of global financial services markets, as modern and efficient financial markets are a prerequisite for further economic development in these countries. This commitment will therefore be reflected in the WTO negotiations on financial services.

The Commission would like to deepen further these regulatory dialogues, more particularly the EU-US dialogue which is already well on track – working closely with the Member States, the European Parliament and the private sector. In the Commission's view, the informality and practicality of the dialogue are proven strengths. The current participants should thus not be changed – although experts could be included on an *ad-hoc* basis.

Important themes for the EU-US regulatory dialogue in the coming years are:

- work towards equivalence/convergence between IAS and US-GAAP – agreeing a roadmap and timetable are now urgent. The Commission intends to take a decision on equivalence of the major third-country accounting systems (required under the Transparency and Prospectus Directives) end 2006 or early 2007;
- facilitate deregistration from US securities exchanges;
- increase co-operation with the US insurance supervisors and remove collateral requirements for EU reinsurers;
- ensuring that the Basel Capital Accord (in Europe the Capital Requirements Directive) is implemented on time and in a way that effectively delivers a level playing field between Europe and the US;
- cooperation on a policy response for Credit Rating Agencies<sup>43</sup>;
- work toward a cooperative model in supervising auditors (in cooperation with the US Public Company Accounting Oversight Board);
- closely follow the Securities and Exchange Commission's market regulation review and facilitating placement of trading screens of EU exchanges in the US;
- look into the governance, financing and participants of international standard setting bodies.

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<sup>43</sup> See also Section 3.1.

## Annex I, Section VI – Asset management

Alongside pension funds and insurance companies, investment funds play an increasingly important role in European financial markets - mobilising household savings and channelling them towards productive investments. The European fund industry currently manages some € 4.7 trillion of assets on behalf of a growing segment of the European population - in some Member States, over 20% of the adult population hold UCITS<sup>44</sup>. A cost-effective fund industry will diversify risk more efficiently, allow retail investors to earn higher returns and make capital available for investment projects.

Investment funds will assume greater importance as public sector pensions remain under funding pressure and occupational pension funds shift to a defined-contribution basis. Small differences in net return on investments in funds can make a huge difference to the accumulated value of capital at pay-out date. A cost-efficient fund industry, where gains are passed on to end-investors, can be part of the solution to Europe's pension deficit.

The 1985 UCITS Directive seeks to facilitate the cross-border offer of investment funds to retail investors. It has provided a focal point for the development of the fund industry in Europe. However, cross-border sales remain constrained: the 'product passport' continues to encounter difficulties and fund managers have not been able to export their expertise. UCITS legislation may entail significant missed opportunities for the industry if it does not provide for effective exercise of other single market freedoms by fund managers, or respond to the reality of a fast developing business. This may translate into higher costs and a more limited range of investment opportunities for investors.

The Commission services will publish a comprehensive review of UCITS legislation this summer. This will identify concrete steps to improve consistent transposition of existing UCITS legislation and to ensure that it delivers its intended effects. The focus will be on consolidating and enhancing the UCITS framework. However, the growing importance of this business warrants a longer-term reflection on whether the UCITS framework is capable of harnessing the full potential of this industry - taking into account the need for appropriate protection of retail investors - or of responding to profound structural changes affecting the asset management business

On the basis of this review, the Commission services will prepare a Green Paper on asset management for publication in July 2005.

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<sup>44</sup> UCITS are harmonised collective investment undertakings that can operate throughout the EU.

### Retail Financial Services integration is needed

The post-FSAP stocktaking process identified the market for retail financial services as an area requiring further attention. A number of important factors have increased the need to consider encouraging future integration in the retail financial services markets:

- the introduction of the **euro** has resulted in price transparency and exchange rate stability;
- **technological innovations**, such as Internet, are providing new opportunities to sell financial services at a distance and hence cross-border;
- increased **consumer mobility** of European citizens is driving demand for efficient cross-border financial services<sup>45</sup>;
- there is a growing need for more efficient long term financial services products to complement **state welfare provision**.

### The way forward

However, integration of retail markets is complex and demanding. Product characteristics, distribution systems, consumer protection, contract law, differences in consumption culture or other economic or structural realities play a more prominent role in this area – and create considerable complexity for cross-border supply.

Integration of retail financial services should not only enable consumers to purchase products cross-border, but also facilitate the sale of products, developed in one domestic market, throughout Europe without the need for substantial modification. This would deliver more choice and better prices to consumers.

The Green Paper should help to identify the most significant cross-border barriers and risks for consumers so that the Commission can carefully prioritise a limited number of actions where there is a business case for further retail integration and tangible results can be achieved.

Supplementary action through active application of competition policy is therefore important. Accordingly, the Commission will undertake sectoral enquiries, with a focus on market monitoring (see Section 3.3 of the Green Paper and Annex I, Section IV).

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<sup>45</sup> For an analysis of factors which affect consumers' propensity to buy from firms in another country see Optem survey on cross-border shopping for financial services carried out for the Commission, available at [http://europa.eu.int/comm/consumers/cons\\_int/fina\\_serv/cons\\_experiences/index\\_en.htm](http://europa.eu.int/comm/consumers/cons_int/fina_serv/cons_experiences/index_en.htm)

Future measures should be based on an appropriate policy mix between harmonised rules and mutual recognition. Such measures must neither erode well-founded consumer protection measures, nor stifle or distort competition.

### **The consumer perspective**

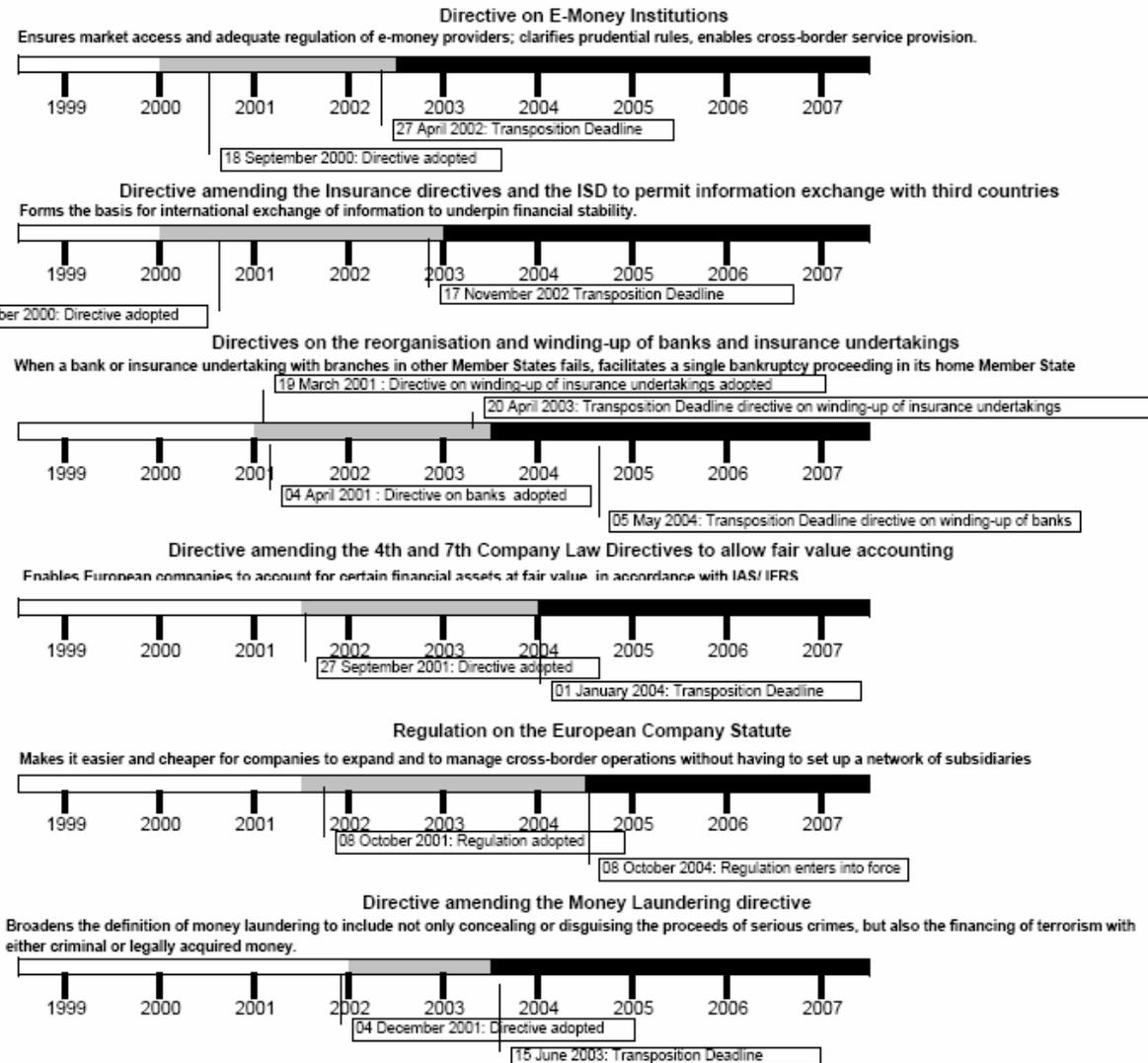
The Commission is committed to listen to all interested parties before coming up with new initiatives. The Commission is committed to ensure the consumer and user perspective is heard<sup>46</sup>, and that the consumer interest is prominent in the major debates. The consumer and user perspective can be further developed with the help of representative organizations which need to continue efforts to improve their organisation and their knowledge and experience in the area of financial services. Additional action to promote and support consumer awareness might be needed – starting at Member State level.

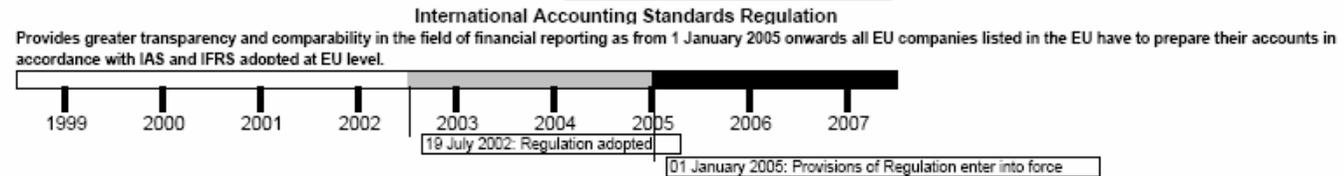
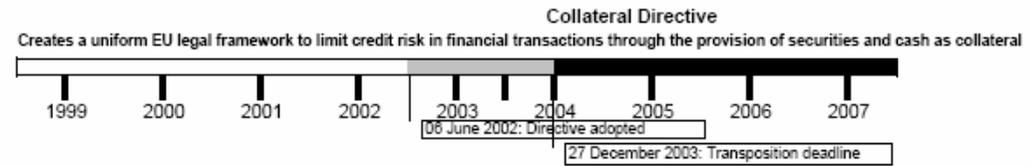
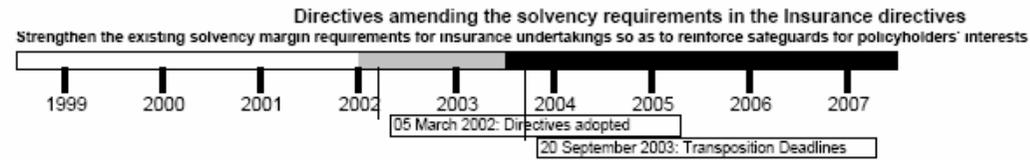
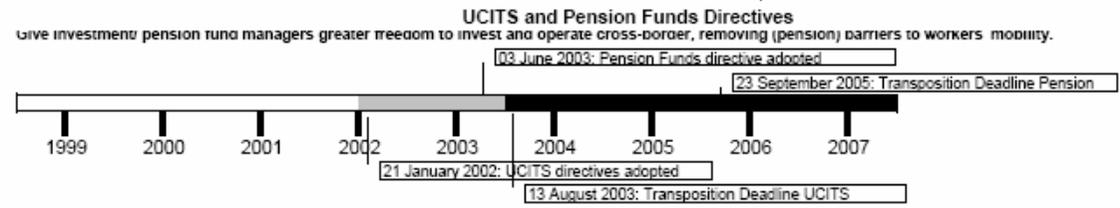
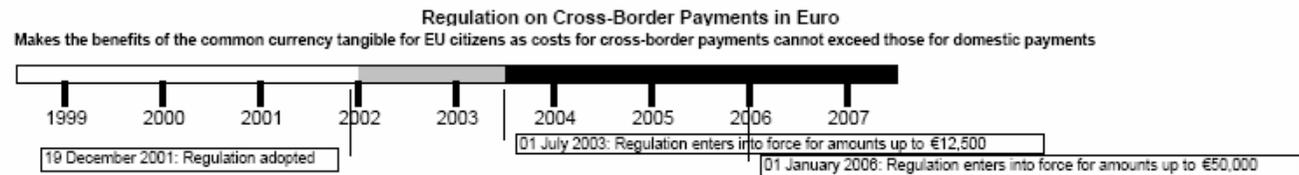
European legislation emphasises the importance of information provision. However, unless consumers themselves develop the skills and knowledge needed to understand increasingly complex financial products, consumers cannot make well-informed (investment) decisions on the basis of this information.

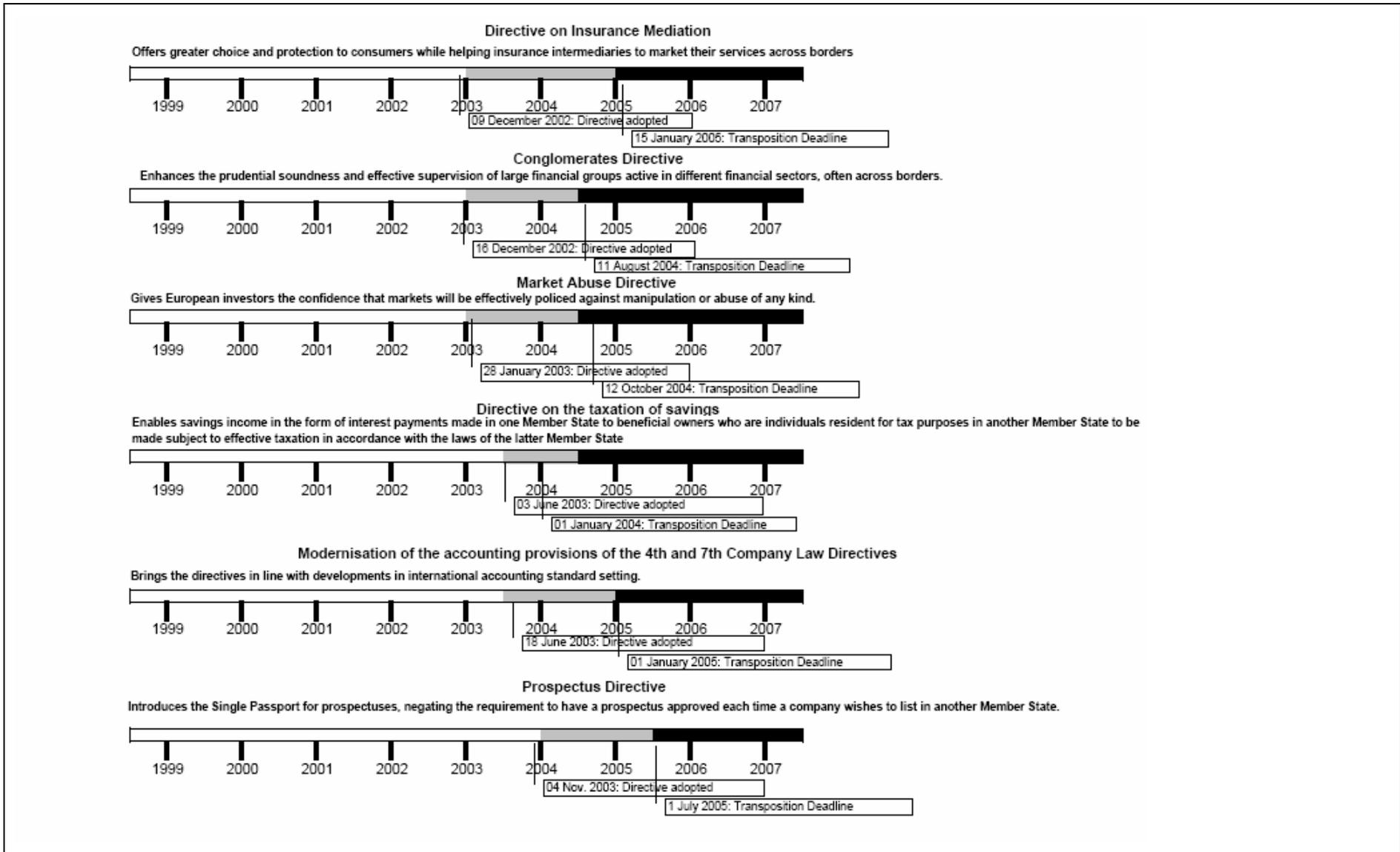
Redress systems could help to increase consumer confidence in the market so that the full benefits of integration can be realized. The out-of-court complaints network for financial services, FIN-NET, already provides some assistance for cross-border disputes.

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<sup>46</sup> One of the initiatives already taken is the establishment of the FIN-USE forum of financial services experts, providing the Commission with valuable input from a user perspective, see [http://europa.eu.int/comm/internal\\_market/finservices-retail/finuse\\_en.htm](http://europa.eu.int/comm/internal_market/finservices-retail/finuse_en.htm).

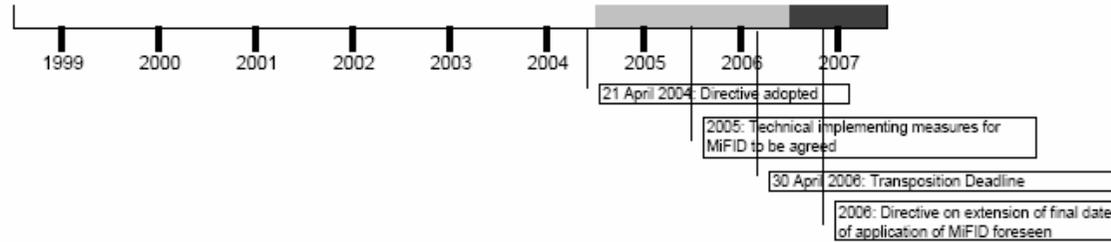






### Markets in Financial Instruments Directive

Creates fair competition between exchanges and banks wishing to internalise securities orders; improves pre-trade transparency, order execution and the price of securities trading.



### Take-Over Bids Directive

Offers transparent pan-European rules for the conduct of takeover bids to the benefit of shareholders, employees and all interested parties.

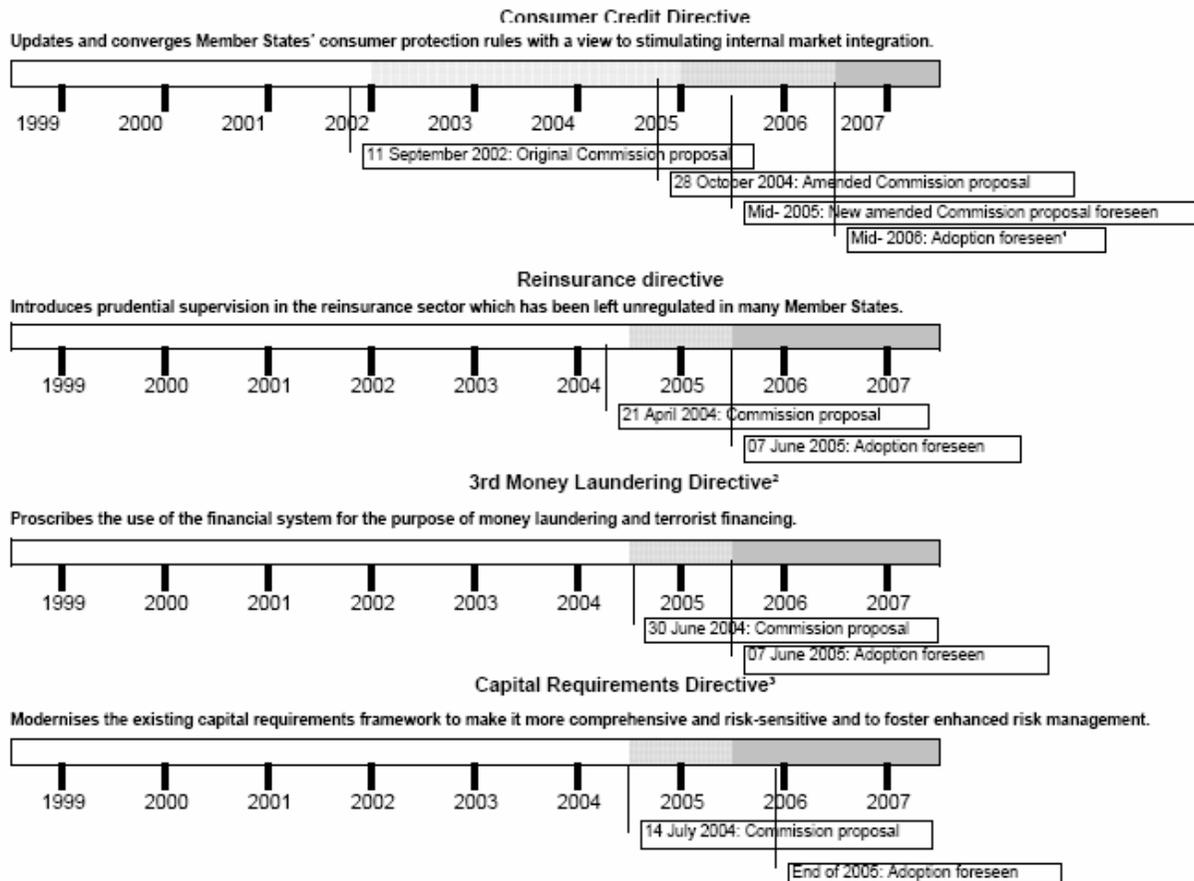


### Transparency Directive

Raises the quality of information available to investors on companies' performance and financial position as well as on changes in major shareholdings.



(ii) Timeline for Completion of Ongoing Legislative Proposals



- (1) These proposals are currently discussed in the Council and European Parliament, and are anticipated to be passed at a single reading.
- (2) A general approach was adopted by the ECOFIN council on 07 December 2004
- (3) A general approach was adopted by the ECOFIN council on 07 December 2004

