



KOMMISSIONEN FOR DE EUROPÆISKE FÆLLESSKABER

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GRØNBOG

Grønbog om politikken for finansielle tjenesteydelser (2005 - 2010)

(forelagt af Kommissionen)

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BILAG II

TIDSSKEMA FOR FORANSTALTNINGER, DER ER VEDTAGET, UNDER FORHANDLING ELLER UNDER FORBEREDELSE

GRØNBOG

OM POLITIKKEN FOR FINANSIELLE TJENESTEYDELSER (2005-2010)

(EØS-relevant tekst)

Den overordnede målsætning for Kommissionens politik for finansielle tjenesteydelser¹ de næste fem år er:

- at konsolidere fremskridtene hen imod et integreret, åbent, konkurrencedygtigt og økonomisk effektivt europæisk finansielt marked og at fjerne de resterende økonomisk betydningsfulde barrierer
- at skabe et marked, hvor finansielle tjenesteydelser og kapital kan cirkulere frit til de lavest mulige omkostninger i hele EU – med en tilstrækkelig og effektiv forsigtighedskontrol, finansiell stabilitet og en høj forbrugerbeskyttelse
- at implementere, håndhæve og løbende evaluere den eksisterende lovgivning, nøje at følge princippet om bedre regulering for eventuelle fremtidige initiativer, at øge konvergensens på tilsynsområdet og at styrke den europæiske indflydelse på de globale finansielle markeder.

I denne grøn bog fremlægger Kommissionen sine foreløbige synspunkter om prioriteterne i politikken for finansielle tjenesteydelser i de næste fem år. Der er taget hensyn til mange konvergerende meninger, som blev tilkendegivet under det toårige konsultationsforløb, der indledtes med arbejdet i fire ekspertgrupper efterfulgt af en bred offentlig høring². To andre parallelle initiativer er rapporten om finansiell integration fra EU-Udvalget for Finansielle Tjenesteydelser³ og udkastet til betænkning om den nuværende integration af de finansielle markeder i EU fra Europa-Parlamentets Udvalg om Økonomi og Valutaspørgsmål⁴.

Kommissionen ønsker at modtage kommentarer til disse foreløbige synspunkter om den fremtidige europæiske politik for finansielle tjenesteydelser. Svar kan indtil 1. august 2005 sendes til e-mail-adressen: markt-consult-financialservices@cec.eu.int. Svarene vil

¹ Som led i Kommissionens overordnede strategiske mål 2005-2009, se KOM(2005) 12 af 26.1.2005, punkt 1.1, andet afsnit, og KOM(2005) 24 af 2.2.2005, punkt 3.2.1

² Se: http://europa.eu.int/comm/internal_market/en/finances/actionplan/stocktaking_en.htm

³ Rapport til drøftelse mellem EU's finansministre den 2. juni 2004, begrænset cirkulation.

⁴ Se: http://www.europarl.eu.int/meetdocs/2004_2009/documents/PR/553/553131/553131en.pdf

blive indsat på Kommissionens websted – medmindre det udtrykkeligt tilkendes, at dette ikke ønskes.

Kommentarerne og det videre forberedelsesarbejde i Kommissionen vil blive taget i betragtning ved udarbejdelsen af det **endelige politikprogram**, der vil blive fremlagt som en hvidbog i **november 2005**.

1. POLITIKKENS HOVEDORIENTERING

Der er i de sidste seks år gjort betydelige fremskridt hen imod et integreret europæisk marked for kapital og finansielle tjenesteydelser. De fleste af de nødvendige regler, der blev skitseret i handlingsplanen for finansielle tjenesteydelser (FSAP), er blevet vedtaget til tiden og er nu ved at blive indført. De europæiske beslutningstagnings- og reguleringsstrukturer er blevet mere rationelle og effektive som et resultat af "Lamfalussy-processen"⁵. Der har til stadighed udviklet sig et systematisk samarbejde mellem de europæiske institutioner og markedsdeltagerne. Og i kølvandet på euroen er den politiske tillid til integrationsprocessen vokset.

Men arbejdet er ikke færdigt. Der begynder nu en ny fase for perioden 2005-2010 med en helt anden fokusering:

- konsolidering af den eksisterende lovgivning og kun få nye initiativer
- sikring af, at de europæiske regler indarbejdes effektivt i den nationale regulering, og strengere håndhævelse fra tilsynsmyndighedernes side
- løbende efterfølgende evaluering, hvor Kommissionen omhyggeligt vil overvåge reglernes anvendelse i praksis – og deres virkninger for den europæiske finanssektor.

Medlemsstaterne, reguleringsmyndighederne og markedsdeltagerne må leve op til deres rolle. Om nødvendigt vil Kommissionen være parat til at foreslå ændring eller endog ophævelse af foranstaltninger, der ikke giver de forventede positive virkninger. Det er afgørende for at sikre, at de europæiske reguleringsrammer, der nu endelig er på plads, kommer til at fungere optimalt – til gavn for markedsdeltagerne, over 20 millioner europæiske virksomheder og 450 millioner borgere og dermed for den europæiske økonomi som helhed.

Dagsordenen for de seneste seks år har været styret af den tankegang, at dybe, likvide og dynamiske finansielle markeder vil sikre en effektiv allokering og tilvejebringelse af kapital og tjenesteydelser i den

⁵ Lamfalussy-rapporten, der blev offentliggjort den 15. februar 2001, findes på Kommissionens websted: http://europa.eu.int/comm/internal_market/securities/lamfalussy/index_en.htm; se også fodnote 8 i bilag I.

europæiske økonomi som helhed – fra engrosleddet til detaileddet – og lægge grunden til øget vækst og beskæftigelseskabelse på lang sigt i hele økonomien. Parolerne for lovgivningsforslagene under handlingsplanen for finansielle tjenesteydelser var konkurrence på tværs af grænserne, markedsadgang, større gennemsigtighed, markedsintegritet, finansiell stabilitet og effektivitet. Lovgivningen har som helhed levet op til disse principper – og de gælder stadig i dag.

Der er ingen tvivl om, at den europæiske finansielle integration har givet positive økonomiske resultater (bilag I). Det er også erkendt i Lissabonstrategien⁶ – og bekræftet ved Kommissionens midtvejsrevision af den, hvor der fokuseres stærkere på vækst og beskæftigelse⁷.

Det er en udfordring at tilpasse de nationale reguleringsmetoder til et fælles europæisk reguleringssystem: det indebærer betydelige forudgående tilpasningsomkostninger for de nationale håndhævelsesorganer og markedsdeltagere. Disse overgangsproblemer er i sig selv en udfordring – særlig da de fleste af dem melder sig inden for et kort tidsrum (2005-2007). Men bekymring over disse overgangsomkostninger bør ikke overskygge de bredere økonomiske fordele. Alternativet er klart: fragmenterede og ringere finansielle markeder og/eller en broget samling nationale likviditetspuljer med forskellig og ukoordineret praksis for risikostyring og med højere kapitalomkostninger. Handlingsprogrammet for finansielle tjenesteydelser har skabt en grundlæggende lovgivningsramme, der skulle give emittenter, investorer og finansielle tjenesteydere mulighed for at agere på paneuropæisk plan uden alt for store juridiske hindringer. Hovedsagen nu er at få dette til at fungere godt.

Både økonomien og markedet vidner i dag om, at der er en europæisk finansiell integration på vej i mange sektorer: på engrosmarkederne; på fondsbørserne; i infrastrukturen for de finansielle markeder, såsom clearing og afvikling. Det har givet alle brugere af finansielle tjenesteydelser bedre betingelser. Der er begyndt at vise sig en europæisk markedsrefleks, men der mangler alligevel fortsat meget på ovennævnte områder og andre detail- og engrosområder. F.eks. står detaildistribution fortsat som et fragmenteret område, og nogle markeder er umulige at komme ind på. Disse barrierer må vurderes omhyggeligt, særlig for at se, om de udgør betydelige økonomiske hindringer for frie kapitalbevægelser og fri udveksling af finansielle tjenesteydelser.

Et velfungerende marked for risikokapital er af strategisk betydning, når det drejer sig om at fremme nye og innovative virksomheder,

⁶ Det Europæiske Råd blev på mødet i Lissabon den 23. og 24. marts 2000 enigt om et nyt strategisk mål for EU for det næste årti: at blive den mest konkurrencedygtige og dynamiske videnbaserede økonomi i verden og at kunne fastholde en bæredygtig økonomisk vækst med flere og bedre job og større social samhørighed.

⁷ Vækst og beskæftigelse: Et nyt afsæt for Lissabonstrategien, februar 2005, http://europa.eu.int/growthandjobs/pdf/COM2005_024_en.pdf

iværksætterkulturen, produktiviteten og en øget, bæredygtig økonomisk vækst i Europa. Det europæiske risikokapitalmarked er i øjeblikket ikke nær så effektivt som f.eks. markedet i USA. Det er derfor vigtigt at få udstukket prioriteter for eventuelle yderligere initiativer på dette område.

Princippet om "bedre regulering" vil blive nøje overholdt hele vejen igennem: fra udformning af politikken til åben og gennemsigtig høring på alle niveauer, udarbejdelse af grundige og overbevisende økonomiske konsekvensanalyser, inden der fremlægges nye forslag, og efterfølgende evaluering. Det er helt afgørende for at mindske de administrative omkostninger for de finansielle institutioner og emitterterne og for at øge den europæiske finanssektors konkurrenceevne.

En sådan disciplin bør også gælde for Europa-Parlamentet og Rådet for at undgå, at forslag fra Kommissionen, som der bevisligt er behov for, ender med at blive unødigt og ødelæggende komplekse. Især bør medlemsstaterne undgå at tilføje lag på lag af reguleringstilføjelser, der er mere vidtgående end selve direktiverne – såkaldt "*forkromning*" – og dermed kvæle fordelen ved et enkelt sæt EU-regler og belaste det europæiske erhvervsliv med unødige byrder og omkostninger⁸.

Der skal som hidtil være en bevisbaseret forventning om, at ethvert nyt europæisk forslag til lovgivning om finansielle tjenesteydelser og gennemførelsesbestemmelser dertil vil medføre betydelige økonomiske fordele i form af effektivitet og stabilitet. En af målestokkene bør være, i hvilket omfang de pågældende foranstaltninger letter transaktioner på tværs af grænserne og fremmer de europæiske finansmarkeders konkurrenceevne, samtidig med at den interne stabilitet beskyttes.

Kommissionen vil fortsat søge at opbygge den størst mulige konsensus i enhver forberedelsesfase på basis af et nært og gennemsigtigt samarbejde med medlemsstaterne og Europa-Parlamentet, EU-tilsynsnettene (CEBS⁹, CEIOPS¹⁰ og CESR¹¹), Den Europæiske Centralbank og markedsdeltagerne og i fremtiden også et mere intenst samarbejde med forbrugergrupper¹². Opfattelsen af regulering varierer fra medlemsstat til medlemsstat – så for en europæisk lovgivning på disse komplicerede områder består kunsten i at finde den balance, der bedst tjener Europas interesser. Enhver lovgivning bør respektere traktatens principper om subsidiaritet og proportionalitet¹³ og styrke konkurrencen.

⁸ Se Kommissionens henstilling om de bedste praksisser for medlemsstaternes gennemførelse af EU-lovgivningen i national ret, SEC(2004) 918.

⁹ Det Europæiske Banktilsynsudvalg, nedsat pr. 1. januar 2004.

¹⁰ Det Europæiske Tilsynsudvalg for Forsikrings- og Arbejdsmarkedspensionsordninger, nedsat pr. 24. november 2003.

¹¹ Det Europæiske Værdipapirtilsynsudvalg, nedsat pr. 7. juni 2001.

¹² FIN-USE-forummets eksperter i finansielle tjenesteydelser giver allerede Kommissionen værdifuldt input set ud fra et brugersynspunkt.

¹³ Hvor lovgivningsløsninger synes at være berettigede, vedtages de kun på EU-basis, hvis det klart har vist sig, at lokale foranstaltninger er slået fejl eller er uigennemførlige; de må ikke have virkninger ud over, hvad der er nødvendigt for, at det indre marked kan fungere godt.

Den vigtige debat om europæisk konvergens på tilsynsområdet må nu bringes et skridt videre. Tilsynssystemet skal have de nødvendige instrumenter til at få reguleringen af finansielle tjenesteydelser på europæisk plan til at fungere effektivt og dermed lette paneuropæiske transaktioner. Resultatet skal sikre fuld demokratisk ansvarlighed over for medlemsstaterne og Europa-Parlamentet. I den forbindelse spiller forfatningstraktatens¹⁴ ikrafttræden en vigtig rolle for Lamfalussy-processens¹⁵ fortsættelse og bæredygtighed på mellemlang sigt.

Med de reguleringsrammer og tilsynsstrukturer, der nu i vid udstrækning er på plads, forventer Kommissionen i løbet af de næste fem år en voksende synergi med forskellige politikområder – særlig konkurrencepolitik og forbrugerpolitik. Der er allerede bebudet nogle sektorundersøgelser vedrørende finansielle tjenesteydelser. Kommissionen ønsker, at markedsdeltagerne spiller en mere effektiv og proaktiv rolle og konsekvent indberetter klare overtrædelser eller konkurrencehæmmende adfærd af enhver art – først på nationalt plan og derefter til Kommissionen.

Andre horisontale og komplementære politikområder (selskabsledelse, reform af selskabsretten, regnskaber, lovpligtig revision) har også meget stor betydning for opbygningen af tillid og gennemsigtighed på de europæiske finansmarkeder. Selv om det ligger uden for denne grønbogs felt, vil arbejdet på disse områder forløbe efter de vedtagne tidsplaner¹⁶ og følge principperne om *“bedre regulering”* og forenkling. Selskaber, regnskabsførere, revisorer og andre markedsdeltagere skal anvende de højeste etiske standarder i deres arbejde. Nationale tilsynsførende skal sikre, at de virkelig anvendes, hvilket også gælder for offshore-finanscentre. Ellers vil der både fra markedets side og fra politisk hold blive tale om et voksende pres for yderligere reguleringsintervention på disse og andre områder. Dette spørgsmål behandles i øjeblikket også i forbindelse med revisionen af 4. og 7. selskabsdirektiv om regnskabsstandarder. Formålet er at øge oplysningspligten for selskaber, der er etableret i offshore-finanscentre.

Debatten om, hvordan organer, der fastlægger globale standarder, såsom International Accounting Standards Board, skal styres, finansieres og udvise politisk ansvarlighed i fremtiden, får voksende politisk betydning. Kommissionen mener, at det offentlige opsyn med disse strukturer må styrkes for at sikre en passende afspejling af interessenterne, en

¹⁴ Især den (nye) artikel I-36, der giver Europa-Parlamentet og Rådet tilbagekaldelsesrettigheder i forbindelse med kontrol af delegerede forordninger vedtaget af Kommissionen.

¹⁵ Ophørsklausulerne⁷ på værdipapiriområdet får virkning fra 2007. De medfører, at de beføjelser til vedtagelse af gennemførelsesforanstaltninger ved udvalgsprocedurer (Lamfalussy-processens niveau 2), som er delegeret til Kommissionen, vil udløbe, medmindre Rådet og Europa-Parlamentet udtrykkeligt tilslutter sig, at de forlænges (efter et forslag til fælles beslutning, som fremsættes af Kommissionen).

¹⁶ Handlingsplan for selskabsledelse og selskabsret, herunder: implementering af IAS, 8. selskabsretsdirektiv, accept af IAS i tredjelande, såsom USA, selskabsledelsesstrukturernes gennemsigtighed, forbedring af aktionærstrukturer osv.

tilfredsstillende gennemsigtighed, en behørig proces og en bæredygtig finansiering.

Udadtil set har Europa gode strategiske muligheder for at få indflydelse på reguleringsparametrene for det fremspirende globale finansielle marked. Derfor er en uddybning af dialogen om de finansielle markeder mellem EU og USA og en styrkelse af de finansielle forbindelser med Japan, Kina og f.eks. Indien så vigtige (se 3.4). Kommissionen går ind for en udvidelse af dagsordenen for disse dialoger, så de bliver mere fremadrettede og i højere grad bygger på input fra markedsdeltagerne. Yderligere bestræbelser for åbning af de finansielle markeder i tredjelande vil blive udfoldet inden for Doha-handelsrunden og også i forbindelse med bilaterale og regionale handelsaftaler.

Kommissionen ønsker at høre, om de interesserede parter:

- kan tilslutte sig den overordnede målsætning for Kommissionens politik i de næste fem år
- kan tilslutte sig den hovedorientering for politikken, der er beskrevet ovenfor.

2. BEDRE REGULERING, GENNEMFØRELSE, HÅNDHÆVELSE OG LØBENDE EVALUERING

En forbedring af økonomien og velstandsskabelsen afhænger i vid udstrækning af, om de europæiske institutioner, tilsynsmyndigheder og markedsdeltagere kan sikre, at de eksisterende regler anvendes og håndhæves konsekvent – så den bedste praksis bliver normen (bilag I, afsnit II). På den måde skabes der lige vilkår – med konsistente og korrekte fortolkninger af fællesskabslovgivningen – og retlig usikkerhed og tvetydighed undgås. Det kræver, at håndhævelsesmekanismerne bliver styrket og indbyrdes forbundet i alle medlemsstaterne, bl.a. via de europæiske tilsynsnet. Dette fælles ansvar er en stor udfordring for Den Europæiske Union med 25 medlemsstater - og yderligere udvidelser på vej.

Prioriteterne er:

- at politikken fortsat fastlægges på en åben og gennemsigtig måde med omfattende anvendelse af høringsmekanismer på alle niveauer
- at forenkle og konsolidere alle relevante (europæiske og nationale) regler om finansielle tjenesteydelser¹⁷

¹⁷ Der kunne i de kommende år blive udvalgt enkelte pilotprojekter for forenkling. Iværksættelse af en feasibility-undersøgelse kunne være nyttig for at finde ud af, om alle regler med tiden kan fusioneres i en enkelt sammenhængende lovgivning (en slags 'regelbog for finansielle tjenesteydelser').

- at skabe konvergerende standarder og praksisser på tilsynsplan og samtidig respektere den politiske ansvarlighed og de nuværende institutionelle grænser
- at samarbejde med medlemsstaterne for at forbedre gennemførelsen og sikre en konsekvent implementering
- at vurdere, om de eksisterende direktiver og forordninger giver de forventede økonomiske gevinster, og at ophæve foranstaltninger, der ikke består denne prøve
- at sikre en behørig implementering og håndhævelse, om nødvendigt med overtrædelsesprocedurer ud fra den eksisterende lovgivning og retspraksis.

Kommissionen ønsker at høre, om de interesserede parter:

- kan tilslutte sig de anførte prioriteter
- har forslag til yderligere foranstaltninger, der bør træffes for at fremme en konsekvent anvendelse og håndhævelse af den europæiske lovgivning.

3. KONSOLIDERING AF LOVGIVNINGEN OM FINANSIELLE TJENESTEYDELSER I PERIODEN 2005-2010

3.1. AFSLUTNING AF DE RESTERENDE FORANSTALTNINGER

LOVGIVNING PÅ VEJ OG FORANSTALTNINGER UNDER FORBEREDELSE

Den første prioritet i de kommende 12 måneder er at blive færdig med det, der mangler vedrørende de resterende elementer i forhandlingsfasen i Europa-Parlamentet og Rådet og vedrørende de nøgleforanstaltninger, der nu er under forberedelse i Kommissionen.

Sidstnævnte omfatter et (eventuelt) direktiv om efterfølgende finansielle tjenesteydelser (clearing og afvikling), nye solvensrammer for forsikring og et (eventuelt) lovgivningsforslag om betalinger (se bilag II). Forberedelsen omfatter både grundige konsekvensanalyser og udstrakt høring af interesserede parter.

OMRÅDER, HVOR KOMMISSIONEN MULIGVIS VIL VÆLGE IKKE AT FREMSÆTTE FORSLAG

Kommissionen er kun forpligtet til at handle, hvis europæiske initiativer vil give erhvervslivet, markederne og forbrugerne klare økonomiske fordele. Konkret ser Kommissionen i øjeblikket på områderne

kreditvurderingsbureauer og finansanalytikere, hvor der – når der foreligger udtalelser fra CESR og CEBS – bør tages stilling til, om der er behov for yderligere lovgivning på dette stadium, eller om de nuværende bestemmelser i direktivet om markedsmisbrug sammen med selvregulerings-¹⁸ og overvågningsmekanismer kan være tilstrækkelige. Det står allerede klart, at Kommissionen ikke vil foreslå gennemførelsesforanstaltninger i forbindelse med direktivet om **overtagelsestilbud**.

Selv om Kommissionen skulle beslutte ikke at foreslå lovgivning på disse og andre områder, vil den ikke tøve med at tage sin holdning op til fornyet overvejelse, hvis den fremtidige markedsudvikling tyder på, at et solidt indgreb er nødvendigt.

OMRÅDER, HVOR KOMMISSIONEN MULIGVIS VIL GENOVERVEJE SIT FORSLAG

Efter EU-medlemsstaternes tilslutning til **Haagerkonventionen** (en multilateral traktat om lovkonflikter vedrørende værdipapirer, der opbevares af en mellemmand¹⁹), fremsatte Kommissionen et forslag om undertegnelse, men nogle af medlemsstaterne og ECB har for nylig udtrykt betænkeligheder ved konventionen. Kommissionen vil inden udgangen af 2005 udarbejde en juridisk vurdering af disse betænkeligheder og derefter beslutte, om der skal foretages ændringer i det nuværende undertegningsforslag.

3.2. **EFFEKTIVT TILSYN**

Efterhånden som den europæiske finansielle integration tager til, viser der sig nye udfordringer for tilsynsorganerne. Overvågning af grænseoverskridende risici kommer til at spille en større rolle, og selv om integrationen vil styrke stabiliteten som helhed, øges mulighederne for afsmittende virkninger, såsom en systemfejl, der kan ramme flere finansielle markeder og/eller grupper, der arbejder i hele EU. Kommissionen tror, at disse udfordringer skal tages op hen ad vejen og efter en "nedefra og op"-tilgang (bilag I, afsnit III).

3.3. **FJERNELSE AF HINDRINGER FOR GRÆNSEOVERSKRIDENDE INVESTERINGER OG KONKURRENCE**

Konsolideringen inden for finansielle tjenesteydelser bør være markedsdirigeret. Samtidig er det på nogle områder nødvendigt at sikre, at det finansielle system er sundt og stabilt. Omkostningerne og hindringerne for grænseoverskridende transaktioner modvirker i høj grad grænseoverskridende investeringer og økonomisk rationalisering i

¹⁸ F.eks. Den Internationale Børstilsynsorganisations (IOSCO) kodeks.

¹⁹ En ensartet juridisk fremgangsmåde til at fastslå ejendomsretten anses for at være særlig nyttig i de tilfælde, hvor værdipapirer ejes via en kæde af finansielle mellemmand i forskellige lande.

Europa. Kommissionen har i en foreløbig rapport identificeret potentielle barrierer, og den har opfordret de interesserede parter til at indberette, hvad der – efter deres opfattelse – er de største hindringer²⁰. Fjernelse eller i hvert fald formindskelse af disse uberettigede hindringer vil styrke konkurrenceevnen i sektoren og økonomien som helhed – og fremme vækst og beskæftigelseskabende (bilag I, afsnit IV).

3.4. DEN EKSTERNE DIMENSION

Kommissionen vil omhyggeligt overvåge, at kandidatlandene lever op til deres ansvar, hvad finansielle tjenesteydelser angår. Desuden bør det fortsat være en prioritet at øge den europæiske indflydelse på den globale scene og at sikre, at den europæiske finanssektor er konkurrencedygtig i global sammenhæng. Finansielle tjenesteydelser er en global forretning – udviklingen i lovgivningen et sted har virkninger andre steder. Bilag I, afsnit V, skitserer de (reguleringsmæssige) mål, der er identificeret, og de gode fremskridt, der er gjort med at etablere åbne og forudgående reguleringsdialoger med USA og Kina. Kommissionen ønsker også at uddybe de finansielle forbindelser med andre lande, såsom Japan og om muligt også Indien, i de kommende fem år.

Kommissionen ønsker fra de interesserede parter at høre:

- om de kan tilslutte sig de nævnte områder, hvor Kommissionen muligvis vil vælge ikke at foretage sig noget, eller om der er andre konkrete områder, hvor Kommissionen bør undlade at fremlægge forslag, som nu er på vej, eller områder, hvor Kommissionen bør overveje et tilbagetog
- deres vurdering af, om de eksisterende regulerings- og tilsynsrammer er tilstrækkelige til at klare tilsynsudfordringerne i de kommende år, samt hvor der er huller, og hvordan disse mest effektivt kan udfyldes
- hvad der skal være målene for regulerings- og samarbejdsaktiviteterne på globalt plan, hvilke sektorer disse skal dække, og hvilke områder der skal prioriteres.

4. EVENTUELLE MÅLRETTEDE NYE INITIATIVER

I tråd med de synspunkter, der blev tilkendegivet under den to år lange høringsproces, der indledtes med arbejdet i fire ekspertgrupper, har Kommissionen identificeret to klare politikområder, hvor initiativer kan være til gavn for den europæiske økonomi: **kapitalforvaltning** (bilag I, afsnit VI) og **finansielle tjenesteydelser i detaileddet**. Arbejdet på de to områder vil få en "nedefra og op"-tilgang, være høringsbaseret og markedsfunderet.

²⁰ Se http://europa.eu.int/comm/internal_market/finances/cross-sector/index_en.htm#obstacles

Ved vurderingen efter afslutningen af handlingsplanen for finansielle tjenesteydelser blev markedet for finansielle tjenesteydelser i detailledet udpeget som et område, hvor der kræves en yderligere indsats (bilag I, afsnit VII). Selv om der er opnået betydelige fremskridt med integreringen af de finansielle markeder, er markederne for detailtjenesteydelser – dvs. de finansielle tjenesteydelser, der udbydes til forbrugerne – stærkt opdelte.

Kommissionens rolle består i at lette forsyningen med finansielle detailtjenesteydelser i Europa. For grænseoverskridende tjenesteydelsesforsyning kan der siges at være fire distributionskanaler: i) forbrugeren køber ydelsen af en leverandør i en anden medlemsstat ved at rejse til den pågældende medlemsstat; ii) en virksomhed henvender sig/sælger til forbrugere i en anden medlemsstat uden at være etableret dér; iii) en virksomhed etablerer sig i mere end en medlemsstat og tilpasser sine tilbud til det lokale marked og iv) tjenesteydelser designes på paneuropæisk plan, men leveres lokalt.

Selv om paneuropæiske pas for virksomheder og forbrugere synes at være den mest fordelagtige fremgangsmåde, diskuteres der for tiden også andre ordninger, såsom de såkaldte "26.-ordninger" for de virksomheder og forbrugere, der ønsker at være aktive på tværs af grænserne uden berøring med de 25 sæt nationale regler. Fordelene ved sådanne "26.-ordninger" er endnu ikke bevist, og det bliver vanskeligt at nå til enighed om valgfri europæiske standarder, der kun gælder for visse produkter. Kommissionen tager imidlertid den igangværende debat ad notam og vil besvare opfordringen til at undersøge sådanne 26.-ordninger yderligere ved at iværksætte en feasibility-undersøgelse f.eks. på områder som simpel (ophørende livs-)forsikring og opsparingsprodukter.

Kommissionen foreslår således, at der for specifikke detailprodukter nedsættes forumgrupper bestående af eksperter på området, som repræsenterer erhvervs- og forbrugerinteresser, til at identificere eventuelle hindringer og undersøge mulige løsninger. Arbejdet vil blive underbygget med omfattende undersøgelser.

OMRÅDER FOR MULIG FREMTIDIG HANDLING

Realkredit er et område, hvor en yderligere detailintegrering måske vil være gavnlig – mens antallet af produkter på markedet ikke bør begrænses. Det er hensigten, at der i løbet af sommeren 2005 skal udsendes en særskilt grønbog om de 48 anbefalinger i rapporten fra forumgruppen for realkredit. Konkrete initiativer vil tidligst kunne komme på tale i 2006 – efter en grundig høring.

Baseret på konklusionerne fra ekspertgrupperne og de synspunkter, der

²¹ Kommissionen er ved at udvikle en fælles referenceramme som et redskab til at forbedre sammenhængen i den europæiske aftaleret.

er tilkendegivet ved den offentlige høring, kunne følgende områder også fortjene yderligere overvejelse:

- **kodificering og eventuel forenkling af eksisterende regler om informationskrav**, særlig for at sikre konsistens og sammenhæng mellem forskellige tekster²¹
- **finansiel mæglervirksomhed**, særlig ved at give mulighed for grænseoverskridende tjenesteydelser fra kyndige og pålidelige formidlere, med fuld gennemsigtighed hvad angår honorarer og forholdet til leverandører. Der er allerede gjort et vist arbejde på dette område²². I betragtning af udviklingen på produktområdet og de finansielle tjenesteyderes struktur bør det imidlertid undersøges, om der er behov for yderligere tilpasning af reglerne vedrørende forretningsadfærd, salgsrådgivning og informationskrav
- **bankkonti**: særlig undersøgelse af hindringer for åbning af konti på tværs af grænserne og spørgsmål vedrørende behandling, flytning, overdragelse og lukning af sådanne konti. Der synes at være særlige problemer forbundet med bl.a. krav vedrørende fast bopæl og identifikation.

Kommissionen ønsker fra de interesserede parter at høre:

- om de kan tilslutte sig de nyudstukne prioriterede områder
- hvilke fordele/ulemper der er ved de forskellige modeller for grænseoverskridende levering af tjenesteydelser, om det forretningsmæssigt set vil være en fordel at udvikle en 26.-ordning, og hvilke forretningsområder der kan få gavn af en sådan
- hvordan forbrugerne kan sættes i stand til at håndtere finansielle produkter mere effektivt, og om det betyder, at der er behov for mere professionel og uafhængig rådgivning, bedre uddannelse eller mere uddannelse på det finansielle område
- om de kan tilslutte sig punkterne på ovenstående liste over detailprodukter, eller om de vil foreslå andre områder, hvor en yderligere indsats på EU-plan kan være fordelagtig.

²²

I forbindelse med forsikringsmæglerdirektivet og direktivet om markedet for finansielle instrumenter.

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 trading²³. 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 report²⁴ and the Kok report²⁵ 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.

²³ 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.

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

²⁵ 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 GDP²⁶
- the London Economics study²⁷ (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 study²⁸ (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.

²⁶ 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.

²⁷ 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.

²⁸ 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.

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 paper²⁹ evaluating the Lamfalussy process³⁰, 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

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

³⁰ 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 effect³¹. 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 worsening³² (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 Commission³³. 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 Scoreboard³⁴, 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

³¹ 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.

³² An overview of transposition deficits will be put on the Commission’s website, see: http://europa.eu.int/comm/internal_market/en/finances/actionplan.

³³ 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.

³⁴ 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 adoption³⁵-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 Treaties³⁶ 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 networks³⁷, 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 paper³⁸ 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

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

³⁶ EC Article 10.

³⁷ http://europa.eu.int/comm/internal_market

³⁸ 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 integration³⁹, 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 measurable⁴⁰. 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 Group⁴¹ 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.

³⁹ 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.

⁴⁰ 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.

⁴¹ 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 acquisitions⁴².

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.

⁴² 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 Agencies⁴³
- 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.

⁴³ 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 UCITS⁴⁴. 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.

⁴⁴ 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 services⁴⁵
- 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).

⁴⁵ 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

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.

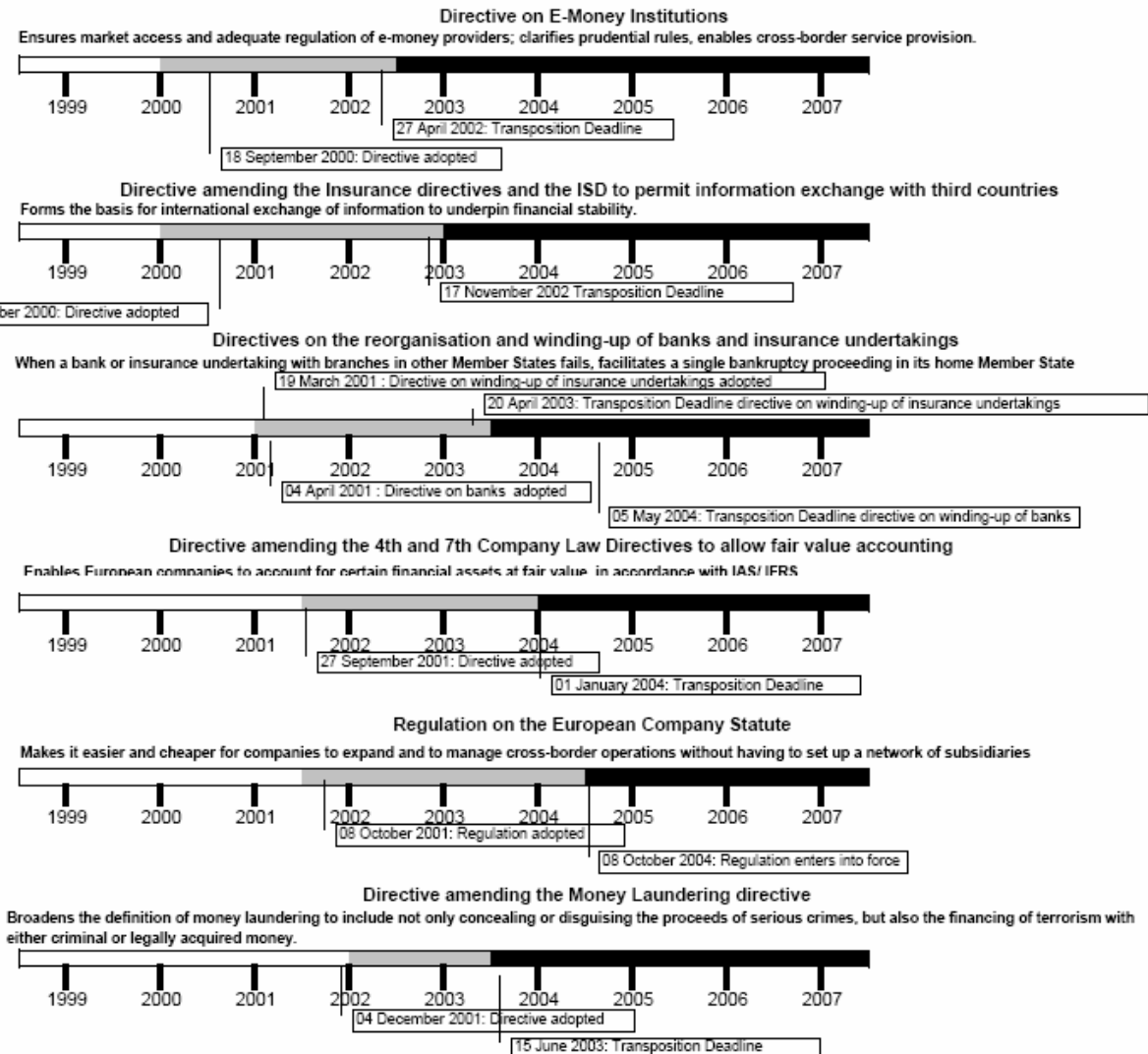
The consumer perspective

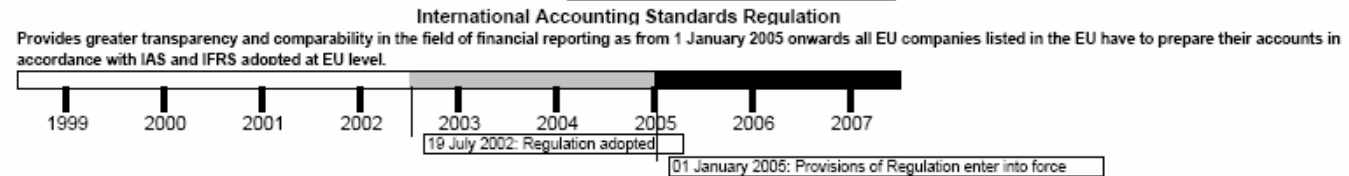
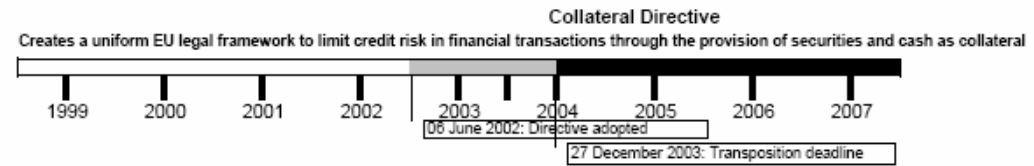
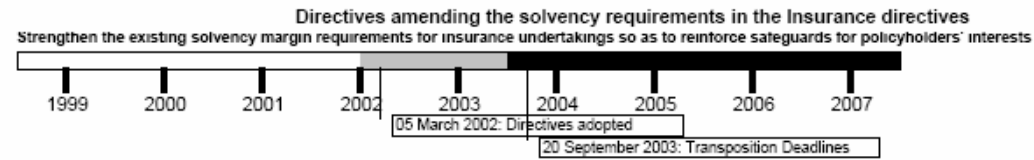
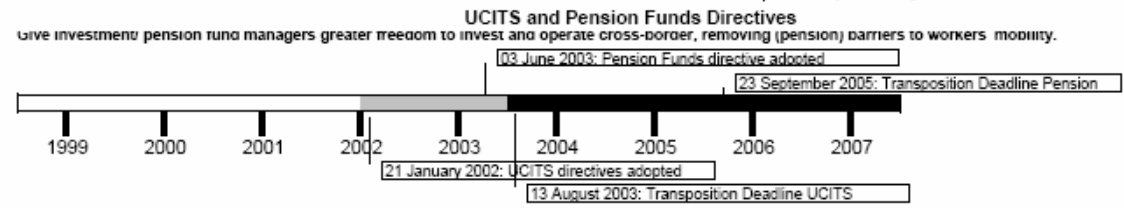
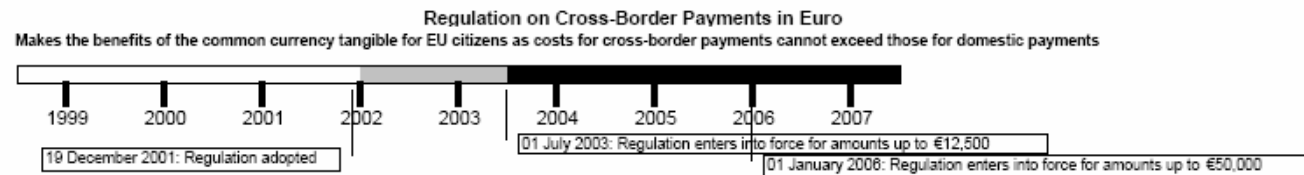
The Commission is committed to listen to all interested parties before coming up with new initiatives. The Commission is committed to ensure the consumer and user perspective is heard⁴⁶, and that the consumer interest is prominent in the major debates. The consumer and user perspective can be further 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.

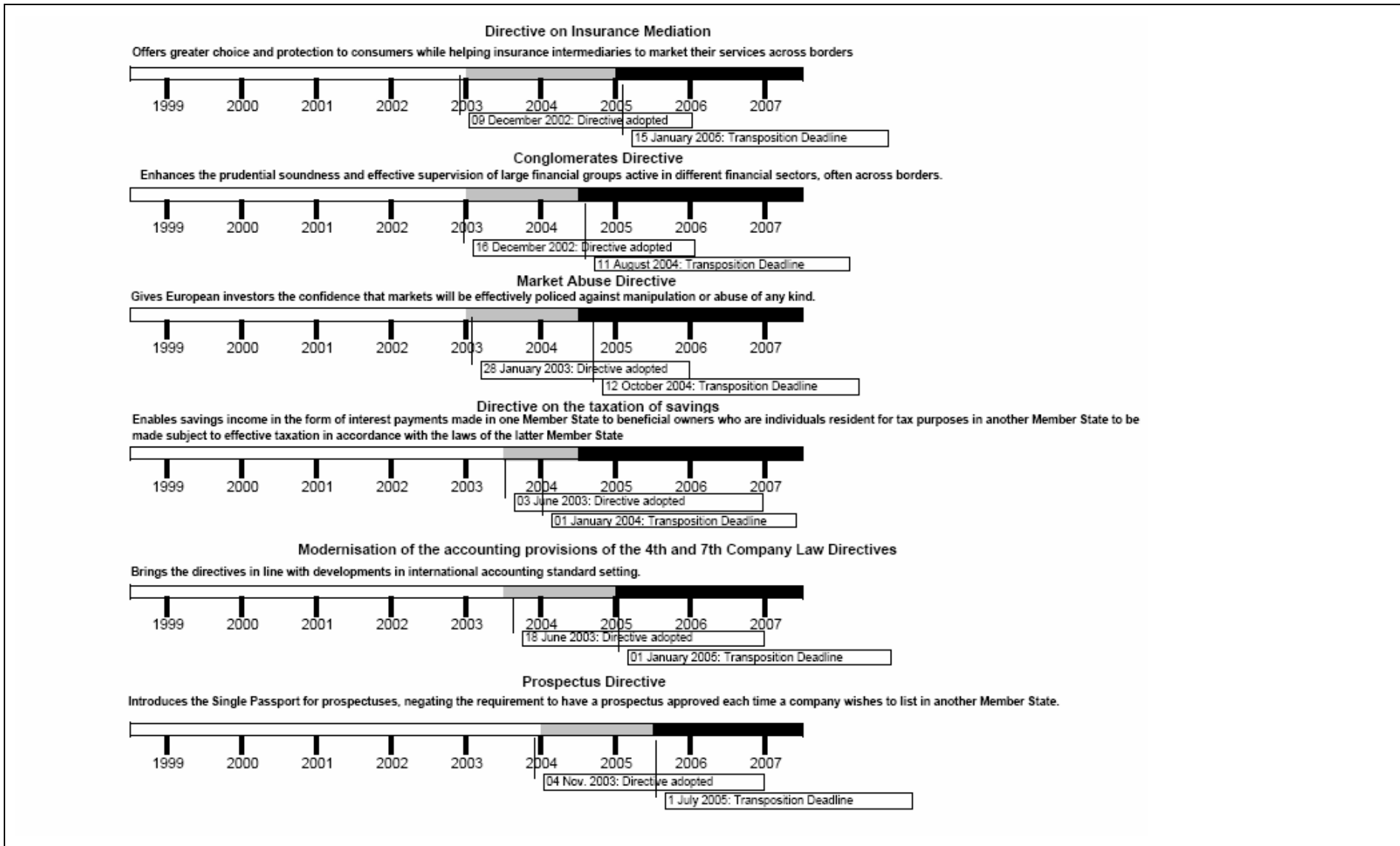
European legislation emphasises the importance of information provision. However, unless consumers themselves develop the skills and knowledge needed to understand increasingly complex financial products, consumers cannot make well-informed (investment) decisions on the basis of this information.

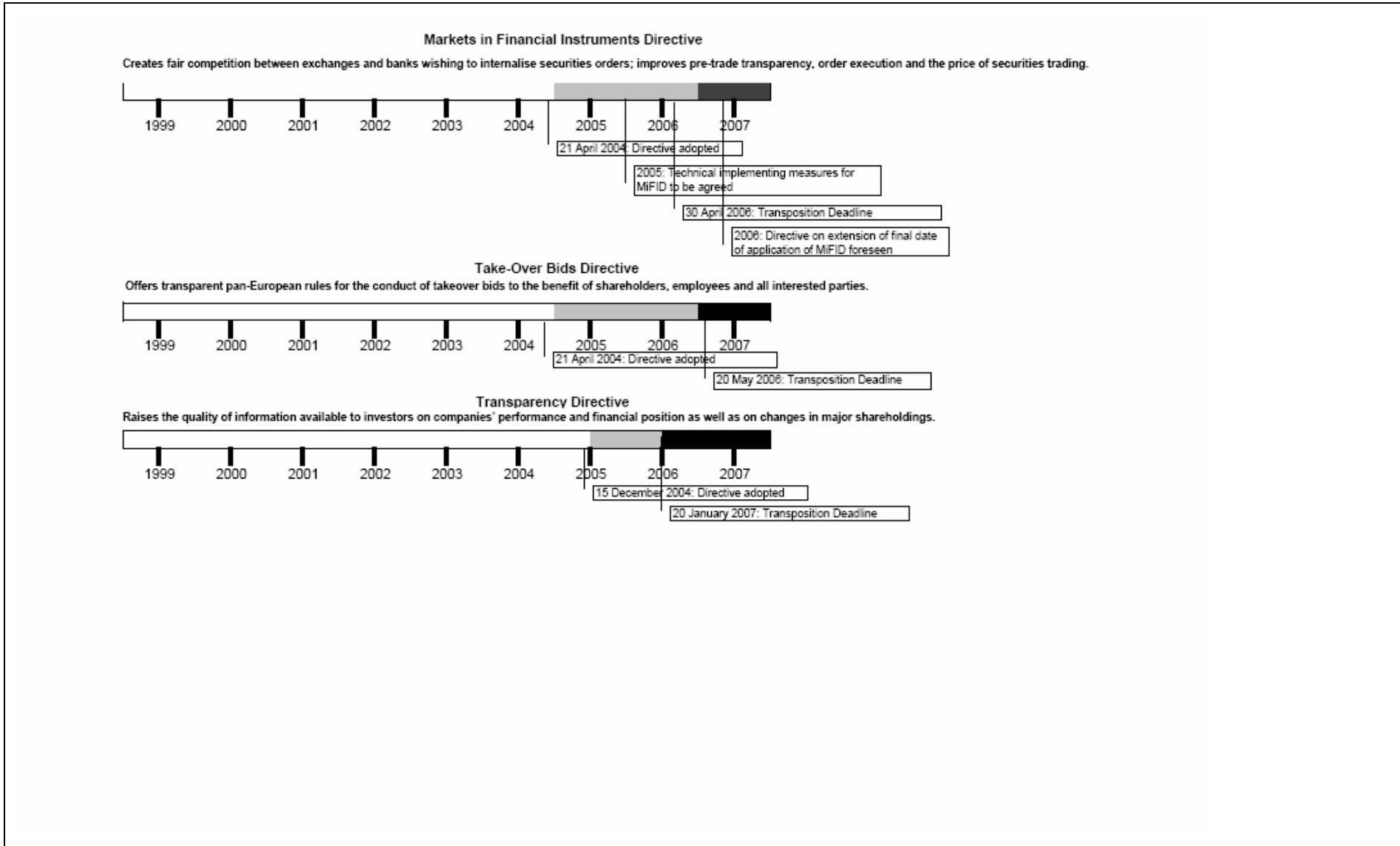
Redress systems could help to increase consumer confidence in the market so that the full benefits of integration can be realized. The out-of-court complaints network for financial services, FIN-NET, already provides some assistance for cross-border disputes.

⁴⁶ 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.

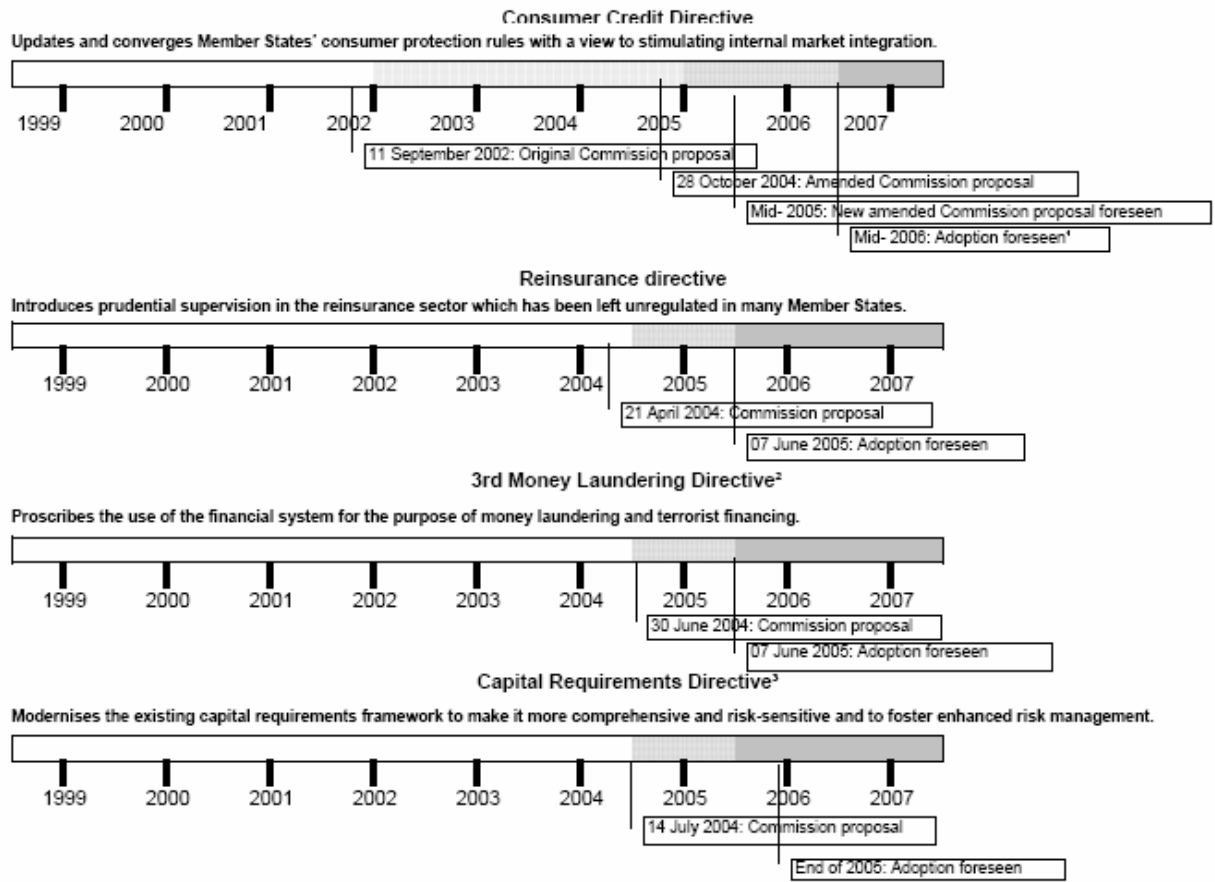




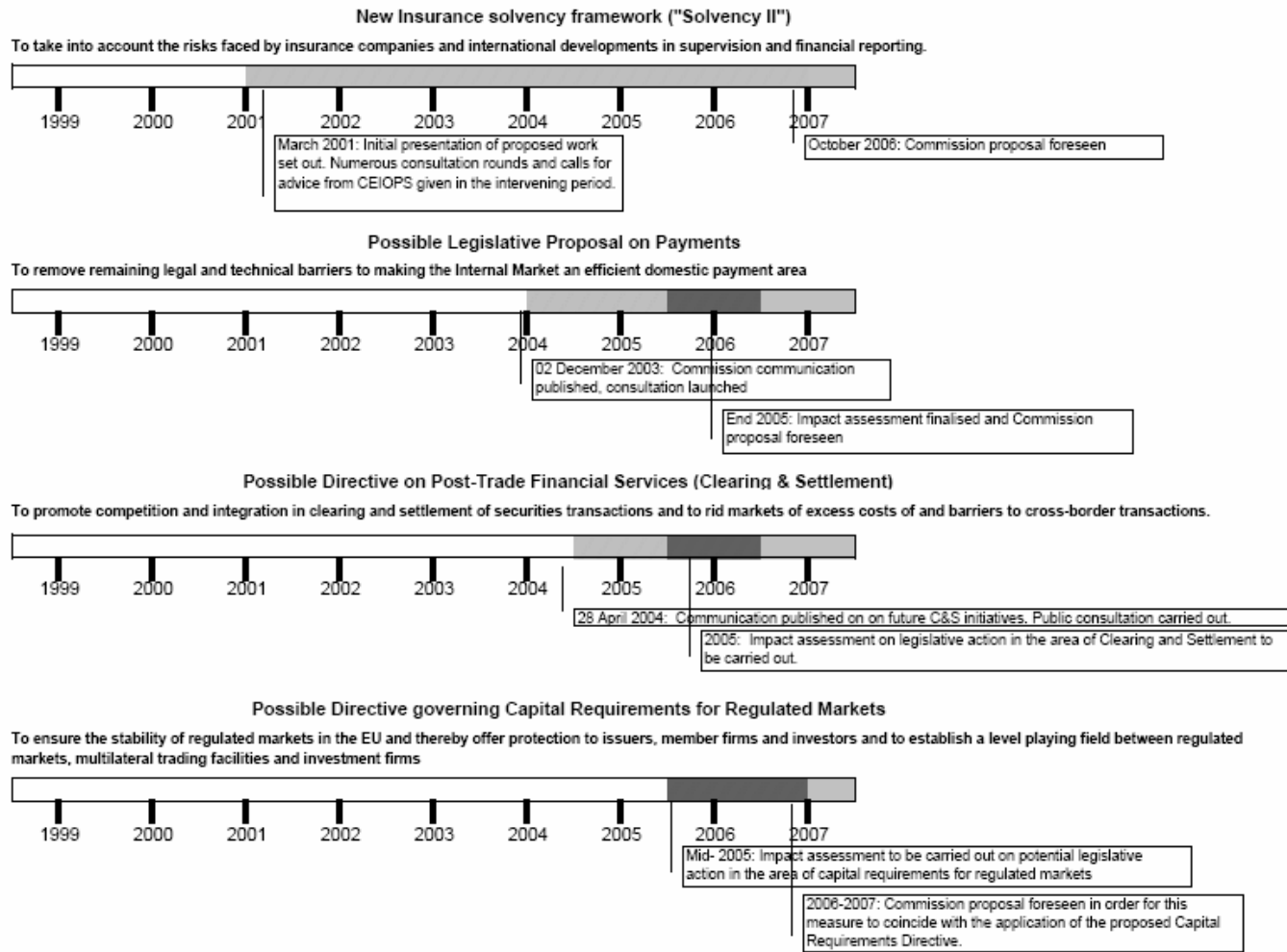




(ii) Timeline for Completion of Ongoing Legislative Proposals



(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



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