



EUROOPA ÜHENDUSTE KOMISJON

Brüssel, 3.5.2005
KOM(2005) 177 lõplik

ROHELINE RAAMAT

finantsteenuste poliitika kohta (2005-2010)

(esitanud komisjon)

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ROHELINE RAAMAT

FINANTSTEENUSTE POLIITIKA KOHTA (2005-2010)

(EMPs kohaldatav tekst)

Komisjoni finantsteenuste poliitika¹ üldesmärgid järgmisel viiel aastal on järgmised:

- ühendada jõud, liikumaks Euroopa integreeritud, avatud, konkurentsivõimelise ja majanduslikult tõhusa finantsturu suunas ning kõrvaldada olemasolevad, olulised majanduslikud tõkked;
- toetada turukonjunkturi, mis võimaldab finantsteenuste ja kapitali vaba ringlust madalaimate võimalike kuludega kogu ELis, ning seda piisava ja tõhusa usaldatavusnormatiivide täitmise kontrollimise, finantsstabiilsuse ja kõrgetasemelise tarbijakaitse tingimustes;
- rakendada, jõustada ja pidevalt hinnata olemasolevat õigusraamistikku, rangelt järgida edaspidiste algatuste puhul parema õigusliku reguleerimise tegevuskava, tõhustada järelevalve ühtlustamist ja tugevdada Euroopa mõju ülemaailmsel finantsturgudel.

Käesolevas dokumendis tutvustatakse komisjoni esialgseid seisukohti finantsteenuste poliitika prioriteetide osas järgnevas viieks aastaks.

Dokumendis on võetud arvesse ühiseid seisukohti, mis on esitatud kaks aastat kestnud, ekspertrühmade tööga alanud ja ulatusliku avaliku aruteluna jätkunud konsultatsioonide jooksul.² Teised samaaegsed algatused hõlmavad ELi finantsteenuste komitee finantsintegratsiooni aruannet³ ja Euroopa Parlamendi majandus- ja rahanduskomitee aruande eelnõu ELi finantsturgude integratsiooni hetkeolukorra kohta.⁴

Komisjon soovib tagasisidet oma esialgsete ettepanekute kohta Euroopa finantsteenuste poliitika tuleviku osas. Vastused tuleks saata 1. augustiks 2005 järgmisel E-posti aadressil: markt-consult-financialservices@cec.eu.int. Vastused avaldatakse komisjoni veebilehel, välja arvatud selgesõnalise taotluse korral seda mitte teha.

Kommentaare ja komisjoni täiendavat ettevalmistustööd arvestatakse finantspoliitika lõpliku programmi kindlaksmääramisel, mis esitatakse **novembris 2005 valge raamatuna.**

¹ Osana komisjoni strateegilistest üldesmärkidest 2005.-2009. aastal. Vt KOM(2005) 12, 26.1.2005, jagu 1.1, teine lõik ja KOM(2005) 24, 2.2.2005, punkt 3.2.1.

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

³ Aruanne esitati ELi rahandusministritele läbivaatamiseks 2. juunil 2004; aruande trükiarv oli piiratud.

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

1. KESKSED POLIITILISED SUUNAD

Viimasel kuuel aastal on tehtud suuri edusamme Euroopa ühtse kapitalituru ja finantsteenuste turu suunas. Enamik finantsteenuste tegevuskavas (Financial Services Action Plan – FSAP) visandatud vajalikest meetmetest on kokku lepitud õigeaegselt ja praegu on käimas nende rakendamine. Lamfalussy protsessi⁵ tulemusena on Euroopa otsustuspädevate ja õigusstruktuuride töö muutunud otstarbekamaks ja tõhusamaks. Euroopa Liidu institutsioonide ja turul osalejate vahel on välja kujunenud jätkuv süstemaatiline koostöö. Euro kasutuselevõtu tagajärjel on kasvanud ka poliitiline usaldus Euroopa integratsiooniprotsessi vastu.

Kuid töö ei ole sellega veel lõppenud. Ajavahemik 2005–2010 kuulub juba uude etappi, kus keskendutakse hoopis teistele teemadele:

- kehtivate õigusaktide ühtlustamine, millele lisanduvad vaid vähesed uued algatused;
- Euroopa Liidus kehtivate eeskirjade siseriiklikesse õigusaktidesse ülevõtmise tulemuslik tagamine ja nende eeskirjade rangem jõustamine järelvalveasutuste poolt;
- pidev järelhindamine, mille käigus komisjon jälgib hoolikalt nende eeskirjade kohaldamist praktikas ja mõju Euroopa finantssektorile.

Nii liikmesriigid, reguleerivad asutused kui ka turul osalejad peavad andma oma panuse. Vajaduse korral võib komisjon muuta või isegi kehtetuks tunnistada meetmeid, mis ei anna soovitud tulemusi. Selline lähenemisviis on oluline, et kindlustada Euroopa Liidu raskelt saavutatud reguleeriva raamistiku parim võimalik toimimine ning seda turul osalejate – enam kui 20 miljoni ettevõtte ja 450 miljoni kodaniku – huvides ja seega kogu Euroopa majanduse hüvanguks.

Viimase kuue aasta tegevuskava põhines nägemusel, et ulatuslikud, likviidsed ja dünaamilised finantsturud tagavad kapitali ja teenuste tõhusama jaotumise ja pakkumise Euroopa majandusruumis ning seda hulgimüügist jaemüügini, olles aluseks suuremale pikaajalisele majanduskasvule ja uute töökohtade loomisele kõigis majandusharudes. Kesksed mõisted FSAPiga seotud õigusaktide ettepanekutes olid piiriülene konkurents, turulepääs, suurem läbipaistvus, turu terviklikkus, finantsstabiilsus ja tõhusus. Üldiselt jäid FSAPi õigusaktid truuks neile juhtpõhimõtetele ja neist lähtutakse tänagi.

⁵ Lamfalussy aruannet, mis avaldati 15. veebruaril 2001, saab lugeda komisjoni veebilehel: http://europa.eu.int/comm/internal_market/securities/lamfalussy/index_en.htm; vt ka joonealune märkus 8 I lisas.

Euroopa finantsintegratsiooni majanduslikus kasus (I lisa) ei ole kahtlustki. Seda tunnistatakse ka Lissaboni tegevuskavas⁶ ning kinnitatakse komisjoni vastavasisulisel vahekokkuvõttes, kus keskendutakse majanduskasvule ja töökohtade loomisele⁷.

Riiklike reguleerivate lähenemisviiside kooskõllaviimine Euroopa Liidu ühtse reguleerimissüsteemiga esitab väljakutse: sellega kaasnevad märkimisväärsed eelnevad kulutused riiklikele järelevalveasutustele ja turul osalejatele. Need üleminekuraskused kujutavad endast väljakutset ja seda just seetõttu, et suurem osa neist on koondunud lühikesele ajavahemikule (2005–2007). Nende üleminekukuludega seotud probleemid ei tohiks varjutada laiemat majanduslikku kasu. Alternatiiviks on killustatud ja madala jõudlusega finantsturud ja/või riiklikud likviidsuskeskkonnad, kus lähtutakse erinevatest ja kooskõlastamata riskipoliitika põhimõtetest ning kus kapitalikulud on kõrgemad. FSAP aitab luua toimiva õigusliku raamistiku, mis peaks võimaldama emitentidel, investoritel ja finantsteenuste osutajatel tegutseda üleeuroopaliselt, ilma liigsete seaduslike takistusteta. Nüüd tuleb tagada selle süsteemi tõrgeteta toimimine.

Täna annavad majandus- ja turunäitajad tunnistust sellest, et üleeuroopaline finantsintegratsioon toimub paljudes valdkondades: hulgimüügiturgudel, väärtpaberibörsidel, finantsturgude infrastruktuurides, nagu näiteks kliiringu või arvelduste alal. See on parandanud tingimusi kõigi jaoks, kes kasutavad finantsteenuseid. Kujunemas on Euroopa turu ühine käitumismudel, kuid nii eespool nimetatud valdkondades kui ka teistes jae- ja hulgimüügi valdkondades on veel palju teha. Näiteks jaemüügi valdkond on ikka veel killustunud ja osale turgudele puudub ligipääs. Nende tõkete mõju tuleb hoolikalt hinnata – eriti just selleks, et välja selgitada, kas nad kujutavad endast märkimisväärsed majanduslikke takistusi kapitali ja finantsteenuste vabale liikumisele.

Hästitoimiv riskikapitaliturg on strateegiliselt tähtis tegur uute ja uuenduslike ettevõtete tegevuse ning ettevõtluse edendamisel, tootlikkuse ja jätkusuutliku majanduskasvu suurendamisel Euroopas. Praegu ei toimi Euroopa riskikapitaliturg nii hästi kui näiteks USA turg. Seetõttu on tähtis määratleda prioriteedid täiendavate algatuste jaoks selles valdkonnas.

Ranget, „paremat õiguslikku reguleerimist“ eesmärgiks seadvat lähenemist kohaldatakse kogu protsessi käigus: alates poliitika väljatöötamisest kuni avatud ja läbipaistva nõustamiseni kõigil tasandil, majandusmõju põhjaliku, veenva hindamiseni enne uute ettepanekute esitamist ning järelhindamiseni. See aitab oluliselt vähendada

⁶ Lissabonis 23. ja 24. märtsil 2000. aastal kokkutulnud Euroopa Ülemkogu andis Euroopa Liidule uue strateegilise eesmärgi saada maailma kõige konkurentsivõimelisemaks ja dünaamilisemaks teadmispõhiseks majandusjõuks, mida iseloomustaks säästev majanduskasv, suurem hulk paremaid töökohti ja suurem sotsiaalne ühtekuuluvus.

⁷ Majanduskasv ja töökohtade loomine: Lissaboni tegevuskava uus algus, veebruar 2005-
http://europa.eu.int/growthandjobs/pdf/COM2005_024_en.pdf

finantsasutuste ja emitentide halduskulusid ning suurendada Euroopa finantssektori konkurentsivõimet.

Neid põhimõtteid peaksid kohaldama ka Euroopa Parlament ja nõukogu, et vältida komisjoni tehtud põhjendatud ettepanekute muutumist asjatult keerukaks. Eriti peaksid liikmesriigid vältima reguleerivate täienduste lisamist direktiividele (nn goldplating), sest see lämmatab ELi ühtsetest eeskirjadest tuleneva kasu ning koormab asjatult Euroopa tööstust ja tekitab sellele tarbetuid kulutusi⁸.

Nii nagu varemgi tuleb põhjendatult lähtuda sellest, et kõigi ELi uute ettepanekutega finantsteenuseid käsitlevate õigusnormide ja rakenduseeskirjade kohta kaasneb märkimisväärne majanduslik kasu tõhususe ja stabiilsuse näol. Kriteeriumiks peaks olema see, mil määral meetmed hõlbustavad piiriülest ettevõtlust ja parandavad Euroopa finantsturgude konkurentsivõimet, kaitstes samal ajal sisemist stabiilsust.

Komisjoni lähenemise eesmärgiks on ka edaspidi jõuda ettevalmistusjärgus võimalikult suurele üksmeelele, tehes tihedat ja läbipaistvat koostööd liikmesriikide ja Euroopa Parlamendi, ELi järelevalveametkondade (CEBSiga⁹, CEIOPSiga¹⁰ ja CESRiga¹¹), Euroopa Keskpanga, turul osalejate ja tulevikus üha enam tarbijarühmadega¹². Liikmesriikide seisukohad reguleerimise kohta on erinevad ja seetõttu tuleb Euroopa õigusaktides leida neis keerulistes valdkondades tasakaal, mis parimal võimalikul viisil teenib Euroopa huve. Kõik õigusaktid peaksid järgima asutamislepingu¹³ subsidiaarsuse ja proportsionaalsuse põhimõtteid ja suurendama vaba konkurentsi.

Tuleb jätkata tähtsat arutelu Euroopa ühtse järelevalve teemal. Järelevalvesüsteem peab sisaldama vajalikke vahendeid, et Euroopa finantsteenuste eeskirjadel oleks tõhus mõju ja et need soodustaksid seega üleeuroopalist ettevõtlust. Tulemus peab tagama täieliku demokraatliku vastutuse liikmesriikide ja Euroopa Parlamendi ees. Seda arvesse võttes on Euroopa põhiseaduse¹⁴ jõustumine keskmise pikkusega ajavahemikul oluline Lamfalussy protsessi järjepidevuse ja jätkusuutlikkuse jaoks¹⁵.

⁸ Vt komisjoni soovitus ELi õigusaktide ülevõtmise parimate lahenduste kohta liikmesriikidele SEK (2004) 918.

⁹ Euroopa pangandusjärelevalve komitee (Committee of European Banking Supervisors), loodud 1. jaanuaril 2004.

¹⁰ Euroopa kindlustusjärelevalve ja töandjapensionide järelevalve komitee (Committee of European Insurance and Occupational Pensions Supervisors), loodud 24. novembril 2003.

¹¹ Euroopa väärtpaberituru reguleerijate komitee (Committee of European Securities Regulators), loodud 7. juunil 2001.

¹² Finantsteenuste ekspertide FIN-USE-foorum juba varustab komisjoni tarbija seisukohast väärtusliku teabega.

¹³ Kui uute õigusaktide loomine on õigustatud, tuleb seda kogu ELi ulatuses rakendada ainult juhul, kui eesmärki ei saavutata kohalike meetmetega või kui neid ei saa rakendada; meetmete mõju ei tohi ületada siseturu tõrgeteta toimimiseks vajalikku mõju.

¹⁴ Eriti (uus) I osa artikkel 36, kus sätestatakse Euroopa Parlamendi ja nõukogu õigus tühistada delegeeritud määrusi, mille on vastu võtnud komisjon.

¹⁵ Regulaarset läbivaatust nõudvad säted (nn sunset clauses) jõustuvad väärtpaberite valdkonnas alates 2007. aastast. Nende sätete jõustumisega lõpevad komisjonile delegeeritud volitused võtta vastu

Komisjon näeb ette, et kui reguleeriv raamistik ja järelevalvestruktuurid on peajoontes paika pandud, siis nende koostoime erinevate poliitikavaldkondadega – eriti konkurentsi- ja tarbijapoliitikaga – paraneb järgmise viie aasta jooksul. Finantsteenuste valdkonnas on juba välja kuulutatud mõned vastavasisulised uurimused. Komisjon sooviks, et turul osalejad tegutseksid tõhusamalt ja ennetavamalt ning teataksid alati eeskirjade tõsisest rikkumisest või konkurentsivastasest käitumisest esmalt riiklikele ametkondadele ja siis komisjonile.

Ka teised horisontaalsed ja täiendavad poliitikavaldkonnad (ettevõtete üldjuhtimine, äriühinguõiguse reformimine, raamatupidamine, põhikirjajärgne auditeerimine) on Euroopa finantsturgude usaldatavuse ja läbipaistvuse suurendamise seisukohalt väga tähtsad. Kuigi need valdkonnad ei kuulu rohelise raamatu reguleerimisalasse, edeneb töö neis valdkondades vastavalt kokkulepitud ajakavale¹⁶ ja parema õigusliku reguleerimise ning lihtsustamise põhimõtetest lähtuvalt. Ettevõtted, raamatupidajad, audiitorid ja teised turul osalejad peavad oma töös järgima kõige kõrgemaid kutse-eetika nõudeid. Riiklikud järelevalveametnikud peavad tagama, et neid nõudeid täidavad ka offshore-rahanduskeskused. Kui seda ei tehta, siis tugevneb nii turusurve kui ka poliitiline surve reguleeriva sekkumise suurendamiseks neis ja teistes valdkondades. Selle küsimusega tegeletakse praegu raamatupidamisstandardeid käsitleva neljanda ja seitsmenda äriühinguõiguse direktiivi läbivaatamise käigus. Eesmärk on muuta avalikustamist tõhusamaks siis, kui kasutatakse offshore-rahanduskeskustes paiknevaid üksusi.

Arutelu ülemaailmseid standardeid kehtestavate asutuste nagu näiteks rahvusvaheliste raamatupidamisstandardite nõukogu edasise juhtimise, rahastamise ja poliitilise aruandekohustuse teemadel on üha suurema poliitilise tähtsusega. Komisjon on arvamusel, et üldsuse järelevalvet nende struktuuride üle tuleb tugevdada, selleks et tagada vajalik arvestamine sidusrühmade seisukohtadega, küllaldane läbipaistvus, nõuetekohane menetlemine ja jätkuv rahastamine.

Ülemaailmsest vaatenurgast on Euroopal märkimisväärne strateegiline võimalus mõjutada kujuneva ülemaailmse finantsturu reguleerivaid näitajaid. Seetõttu ongi oluline ELi ja USA finantsturgude vahelise dialoogi edendamine ning finantssuhete arendamine Jaapani, Hiina ja näiteks Indiaga (vt 3.4). Komisjoni arvates võiks neis aruteludes käsitleda laiemat teemaderingi, et muuta dialoog rohkem tulevikku suunatuks ja pöörata turul osalejate seisukohtadele enam tähelepanu. Täiendavaid jõupingutusi kolmandate riikide finantsturgude avamiseks tehakse edaspidigi nii Doha

rakendusmeetmeid komiteemenetluse abi (Lamaflussy protsessi teine aste), välja arvatud juhul, kui Euroopa Parlament ja nõukogu ei lepi selgesõnaliselt kokku volituste pikendamises (komisjoni kaasotsustamismenetluse teel tehtud ettepaneku tulemusena).

¹⁶

Äriühinguõiguse ja ettevõtete üldjuhtimise alane tegevuskava, kaasa arvatud järgmised meetmed: rahvusvaheliste raamatupidamisstandardite (IAS-standardite) rakendamine, kaheksas äriühinguõiguse direktiiv, IAS-standardite heakskiitmine kolmandate riikide nagu nt USA poolt, ettevõtete üldjuhtimisstruktuuride läbipaistvus, aktsionärstruktuuride arendamine jne.

voorus kui ka kahepoolsetes ja piirkondliku kaubanduse lepingutes.

Komisjon palub sidusrühmadelt nende seisukohta järgmistes küsimustes:

- kas nad nõustuvad komisjoni poliitika järgmise viie aasta üldiste eesmärkidega?
- kas nad nõustuvad eespool kirjeldatud poliitiliste peasuundadega?

2. PAREM ÕIGUSLIK REGULEERIMINE, ÜLEVÕTMINE, JÕUSTAMINE JA PIDEV HINDAMINE

Paremad majandustulemused ja heaolu kasv sõltuvad paljuski Euroopa Liidu institutsioonide, järelevalveasutuste ja turul osalejate võimest tagada kehtivate eeskirjade järjekindel kohaldamine ja jõustamine nii, et head tavad muutuksid normiks (vt I lisa II jagu). Nii luuakse võrdsed tingimused, kus ühenduse õigust tõlgendatakse ühtselt ja täpselt, vältides õiguslikku ebakindlust ning mitmeti mõistetavust. See tähendab, et liikmesriikide järelevalvemehhanisme tuleb muuta tugevamaks ja omavahel ühendada, tehes seda muu hulgas Euroopa järelevalvevõrkude kaudu. Kõnealune jagatud vastutus on 25 liikmesriigiga Euroopa Liidule suureks väljakutseks, eriti nüüd, mil valmistatakse ette uusi laienemisi.

Prioriteedid on järgmised:

- ka edaspidi kohaldatakse avatud ja läbipaistvat poliitikat ning nõustamismehhanisme kasutatakse laialdaselt kõikidel tasanditel;
- lihtsustatakse ja konsolideeritakse kõik asjaomased (ELi ja riiklikud) finantsteenuseid reguleerivad eeskirjad¹⁷
- ühtlustatakse järelevalvenormatiive ja -toiminguid, arvestades poliitilise aruandekohustuse ning kehtivate institutsionaalsete piiridega;
- tehakse koostööd liikmesriikidega, et parandada ELi õigusaktide ülevõtmist ja tagada nende järjepidev rakendamine;
- hinnatakse, kas kehtivaid direktiive ja määrusi rakendades on võimalik saada oodatud majanduslikku kasu, ning tunnistatakse kehtetuks meetmed, mis ei täida seda nõuet;
- tagatakse õigusaktide nõuetekohane rakendamine ja jõustamine, kohaldades vajadusel rikkumise korral rakendatavaid menetlusi, mis põhinevad kehtival õigusaktidel ja väljakujunenud kohtupraktikal.

¹⁷ Lähiaastatel on kasvas mõned eeskirju lihtsustavad pilootprojektid. Teostatavusuuringu käivitamine võib aidata välja selgitada, kas tulevikus on võimalik koondada kõik eeskirjad üheks tervikuks (n.ö finantsteenuste üldeeskirjadeks).

Komisjon palub sidusrühmadelt nende seisukohta järgmistes küsimustes:

- kas nad nõustuvad loetletud prioriteetsete meetmetega?
- millised lisameetmed tuleks võtta Euroopa õigusaktide järjekindla kohaldamise ja täitmise tagamise soodustamiseks?

3. FINANTSTEENUSEID KÄSITLEVATE ÕIGUSAKTIDE KONSOLIDEERIMINE AJAVAHEMIKUL 2005-2010

3.1. POOLELIOLEVATE MEETMETE LÕPULEVIIMINE

MENETELDAVAD ÕIGUSAKTID JA ETTEVALMISTATAVAD MEETMED

Järgmise 12 kuu prioriteet on viia lõpule Euroopa Parlamendis ja nõukogus arutatavate ettepanekute menetlemine ning komisjonis ettevalmistatavad põhimeetmed.

Ettevalmistatavad meetmed on (võimalik) direktiiv kaubandustehingutele järgnevate finantsteenuste (kliiringu ja arvelduste) kohta, uus kindlustusseltside maksejõulisuse raamistik ja (võimalik) õigusakti ettepanek maksete kohta (vt II lisa). See ettevalmistustöö eeldab nii põhjalikke mõjuhindanguid kui ka laialdasi nõupidamisi sidusrühmadega.

VALDKONNAD, KUS KOMISJON VÕIB OTSUSTADA LOOBUDA ETTEPANEKUTE ESITAMISEST

Komisjon on võtnud endale kohustuse tegutseda ainul siis, kui ELi algatused toovad tööstusele, turgudele ja tarbijatele selget majanduslikku kasu. Komisjon tegeleb parajasti **reitinguagentuuride** ja **finantsanalüütikute tegevuse** uurimisega, mille puhul ta peab pärast CESRilt ja CEBSilt nõu küsimist otsustama, kas käesolevas etapis on vaja täiendavaid õigusakte või piisab turu kuritarvitamise direktiivi kehtivatest sätetest, enesekontrollist¹⁸ ja järelevalvemehhanismidest. Juba praegu on selge, et komisjon ei tee ettepanekut rakendusmeetmete võtmiseks **ülevõtmispakkumiste direktiivi** kohaselt.

Vaatamata sellele, et komisjon otsustab, et ei tee ei selles valdkonnas ega ka teistes valdkondades õigusaktide ettepanekuid, ei kõhkle ta oma seisukohta muutmast, kui turu areng peaks nõudma otsest sekkumist.

VALDKONNAD, KUS KOMISJON VÕIB OMA ETTEPANEKUID MUUTA

Pärast seda, kui ELi liikmesriigid nõustusid **Haagi konventsiooniga**¹⁹ (mitmepoolne leping, mis käsitleb vahendajate valduses olevate väärtpaberitega seotud seaduste vastuolusid), tegi komisjon ettepaneku lepingu allakirjutamiseks, kuid hiljuti teatasid mõned liikmesriigid ja Euroopa Keskpank sellega seotud probleemidest. Komisjon valmistab

¹⁸ Nt Rahvusvahelise Väärtpaberijärelevalve Organisatsiooni (IOSCO) eeskirjad.

¹⁹ Ühtset õiguskorraldust varaliste õiguste reguleerimiseks peetakse eriti kasulikuks juhtul, kui väärtpaberid kuuluvad erinevates riikides tegutsevatele finantsvahendajate kettidele.

2005. aasta lõpuks ette tõstatatud probleemide õigusliku hinnangu ja otsustab seejärel, kas allakirjutamiseks esitatud ettepanekut on vaja muuta.

3.2. TÕHUS JA TULEMUSLIK JÄRELEVALVE

Euroopa finantsintegratsiooni käigus kerkivad järelevalveasutuste ette uued väljakutsed. Piiriüleste riskide jälgimine on muutumas üha olulisemaks ja kuigi lõimimine parandab üldist stabiilsust, suureneb segavate järeelmõjude tõenäosus (nt mitmeid finantsturge ja/või ELi tasandil tegutsevaid rühmi mõjutavate süsteemirikete tõenäosus). Komisjon usub, et seda on altpoolt tulenevate järk-järguliste algatuste abil võimalik vältida (vt I lisa III jagu).

3.3. PIIRIÜLESE INVESTEERIMISE JA KONKURENTSI VÕIMALDAMINE

Tõuke finantsteenuste valdkonna ühendamiseks peaks andma turg. Samas tuleb siiski tagada majanduslik usaldatavus ja rahandussüsteemi stabiilsus teatud valdkondades. Piiriüleste tehingutega seotud kulutused ja takistused nende tehingute teostamisele takistavad olulisel määral piiriülest investeerimist ja majanduse ratsionaliseerimist Euroopas. Komisjon on esialgses aruandes määratlenud võimalikud takistused ja kutsunud sidusrühmi üles teatama nende arvates suurimatest tõketest²⁰. Nende põhjendamatute takistuste kõrvaldamine või vähemalt vähendamine tugevdab rahandussektori ja üldisemalt kogu majanduse konkurentsivõimet ning soodustab majanduskasvu ja uute töökohtade loomist (vt I lisa IV jagu).

3.4. VÄLISPOLIITILINE MÕÕDE

Komisjon jälgib tähelepanelikult, et kandidaatriigid täidaksid oma kohustusi finantsteenuste valdkonnas. Samas peaks prioriteediks jääma Euroopa mõju ülemaailmne tugevdamine ja Euroopa rahandussektori ülemaailmse konkurentsivõime tagamine. Finantsteenuste valdkond on rahvusvaheline ja ühe õigusruumi areng mõjutab ka teisi. I lisa V jaos antakse ülevaade püstitatud (õiguslikest) eesmärkidest ja olulistest edusammudest, mis on tehtud enne õigusaktide vastuvõtmist USA ja Hiinaga peetud dialoogi käigus. Komisjon sooviks järgmise viie aasta jooksul süvendada finantssuhteid ka teiste riikidega, nagu näiteks Jaapaniga, ja võimaluse korral ka Indiaga.

Komisjon palub sidusrühmadelt nende seisukohta järgmistes küsimustes:

- kas nad nõustuvad nimetatud meetmetega valdkondades, kus komisjon otsustab jätta meetmed võtmata, või on teisi konkreetseid valdkondi, kus komisjon ei peaks esitama ettevalmistamisel olevaid ettepanekuid, või valdkondi, kus komisjon peaks kaaluma esitatud ettepanekute tagasivõtmist?

²⁰ http://europa.eu.int/comm/internal_market/en/finances/actionplan/stocktaking_en.htm

- kas olemasolevast reguleerivast raamistikust ja järelevalveraamistikust piisab tulevikus tekkivate järelevalveväljakutsetega toimetulemiseks ning millised on puudused ja kuidas neid kõige tõhusamalt kõrvaldada?
- millised on eesmärgid, milliseid sektoreid tegevus peaks hõlmama ja millised on ülemaailmsel tasandil peamised reguleeritavad ja koostöövaldkonnad?

4. VÕIMALIKUD UUED ALGATUSED TEATUD VALDKONDADES

Kooskõlas arvamustega, mis avaldati nelja ekspertrühma tööga alanud ja kaks aastat kestnud konsultatsioonide käigus, on komisjon teinud kindlaks kaks selgelt piiritletud poliitikavaldkonda, kus algatustest võib Euroopa majandusele kasu olla: **varahaldus** (vt I lisa VI jagu) ja **finantsteenuste jaeturg**. Neis valdkondades tehakse tööd madalaimalt tasandilt lähtudes, pidades läbirääkimisi ja arvestades turu vajadusi.

Finantsteenuste tegevuskavale järgnenud kokkuvõtetes tõdeti, et finantsteenuste jaeturg on valdkond, millele tuleb pöörata suuremat tähelepanu (vt I lisa VII jagu). Kui finantsturgude ühendamisel on saavutatud märkimisväärset edu, siis finantsteenuste jaeturud ehk tarbijatele pakutavad finantsteenused on veel väga killustunud.

Komisjoni ülesanne on lihtsustada finantsteenuste pakkumist Euroopa jaeturul. Piiriülel tasandil võib eristada nelja teenuste pakkumise võimalust: (i) tarbija ostab teenust teises liikmesriigis tegutselt teenuseosutajalt, reisides ise sellesse liikmesriiki; (ii) ettevõtte turustab/müüb teenuseid teise liikmesriigi tarbijatele olemata ise selles riigis registreeritud; (iii) ettevõtte on registreeritud rohkem kui ühes liikmesriigis ja kohandab oma pakkumisi vastavalt kohalikule turule ja (iv) teenused kavandatakse vastavalt üleeuroopalistele standarditele isegi siis, kui neid osutatakse kohalikul tasandil.

Kuigi üleeuroopaliste tegevuslubade andmine ettevõtetele ja tarbijatele näib olevat parim lahendus, arutatakse praegu ka alternatiivseid võimalusi nagu näiteks nn 26. korraldust, mis ei mõjuta 25 liikmesriigi siseriiklikke eeskirju ning on mõeldud neile ettevõtjatele ja tarbijatele, kes soovivad tegutseda mitmes liikmesriigis. Selliste korralduste eeliseid tuleb veel tõestada ja on keeruline jõuda kokkuleppele ainult teatud toodete jaoks kavandatud Euroopa standardite osas. Komisjon arvestab siiski toimuva aruteluga ja lubab sellisete korraldustega edaspidi lähemalt tutvuda, käivitades teostatavusuuringu nt kindlustus- (tähtjaliste kindlustuste ja elukindlustuste) ja säästutoodete valdkonnas.

Komisjon teeb ettepaneku luua teatavate jaeturu toodete jaoks kõnealuse valdkonna ekspertidest ning ettevõtete ja tarbijate esindajatest arutelurühmad, mille ülesandeks on välja selgitada takistused ja analüüsida võimalikke lahendusi. See töö toetub laialdastele uuringutele.

VALDKONNAD, KUS ON VÕIMALIKUD EDASISED MEETMED

Hüpoteeklaenu on üks valdkondi, kus jaeturu teenuste edasine integratsioon võib kasu tuua, kuid turul olevate toodete hulka ei tohiks siiski piirata; eraldi rohelises raamatus, mis on kavas avaldada 2005. a. suvel, käsitletakse hüpoteeklaenude töörühma (Mortgage Credit Forum Group) aruandes esitatud 48 soovitus. Konkreetseid algatusi saab esitada kõige varem 2006. aastal pärast põhjalikke arutelusid.

Töörühmades tehtud järelduste ja avalike arutelude käigus esitatud seisukohtade põhjal võib väita, et edasist tähelepanu tuleb pöörata ka järgmistele valdkondadele:

- **teabenõuetele kehtivate eeskirjade kodifitseerimine ja võimalik lihtsustamine**, eelkõige eesmärgiga tagada erinevate tekstide sidusus ja ühtsus²¹;
- **finantsvahendus**: Eriti tähtis oleks lubada asjatundlikel ja usaldusväärsetel vahendajatel osutada teenuseid piirüleselt, nõudes täielikku läbipaistvust tasustamisel ja suhetes teenuste osutajatega. Selles valdkonnas on tööga juba alustatud²². Arvestades arenguga nii toodete alal kui ka finantsteenuseid osutavate ettevõtete struktuuris, tuleb uurida vajadust ettevõtlus-, müüginõustamis- ja avalikustamiseeskirjade edasise ühtlustamise järele.
- **pangakontod**, eriti teistes liikmesriikides konto avamisega seotud raskused ja kontode haldamise, üleviimise ja sulgemisega seotud küsimused. Eriti suuri probleeme on ilmnunud seoses nt residentsus- ja identifitseerimisnõuetega.

Komisjon palub sidusrühmadelt nende seisukohta järgmistes küsimustes:

- kas nad nõustuvad loetletud prioriteetsete valdkondadega?
- millised puudused ja eelised kaasnevad piiriülese teenuste osutamise erinevate mudelitega, kas nn 26. korralduse väljatöötamine on ärielistel kaalutlustel vajalik ja millised tegevusharud saaksid sellest kasu?
- kuidas tarbijad saaksid finantsteenuseid tõhusamalt tarbida ning kas see eeldab asjatundlikumate ja sõltumatute nõuandeteenuste lisamist või paremat rahandusalast koolitust?
- kas nad nõustuvad eespool esitatud jaeturu finantsteenuste loeteluga või soovivad nad lisada valdkondi, kus lisameetmetest

²¹ Komisjon töötab välja ühist tugiraamistikku Euroopa lepinguõiguse sidususe parandamiseks.
²² Võttes aluseks kindlustusvahenduste direktiivi ja rahastamisvahendite direktiivi.

ELi tasandil oleks kasu?

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.

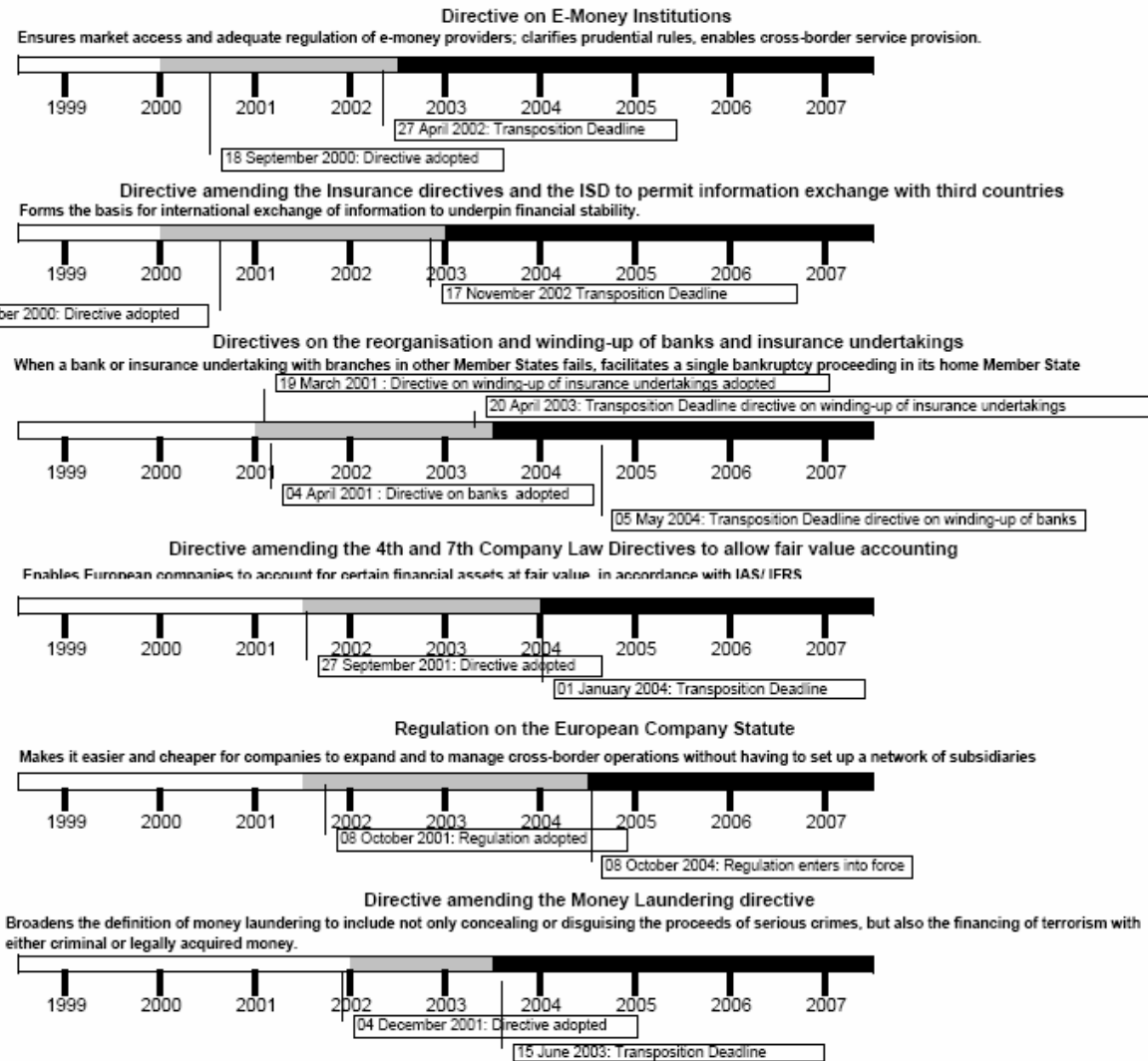
The consumer perspective

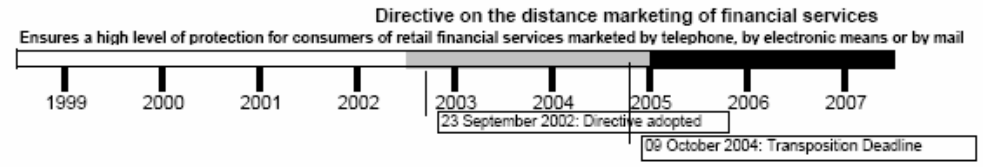
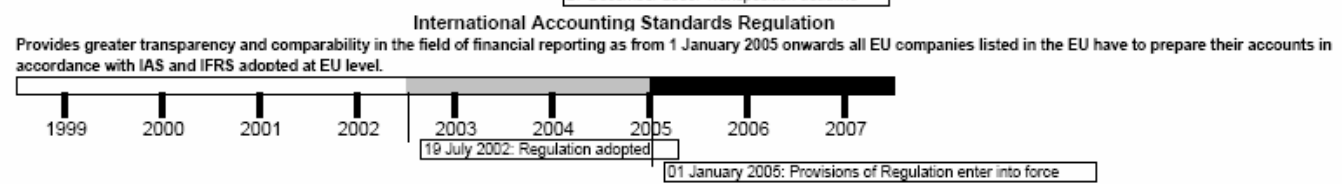
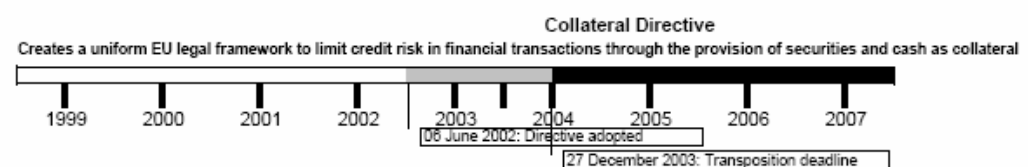
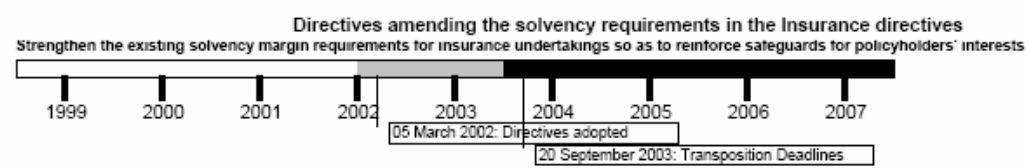
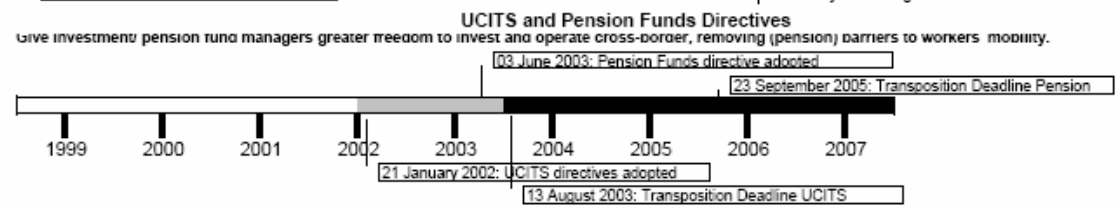
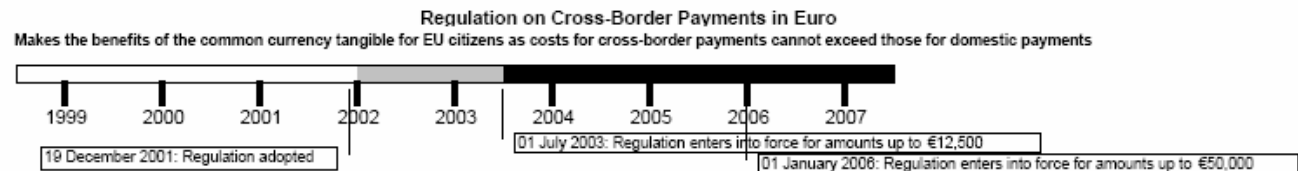
The Commission is committed to listen to all interested parties before coming up with new initiatives. The Commission is committed to ensure the consumer and user perspective is heard⁴⁶, and that the consumer interest is prominent in the major debates. The consumer and user perspective can be further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

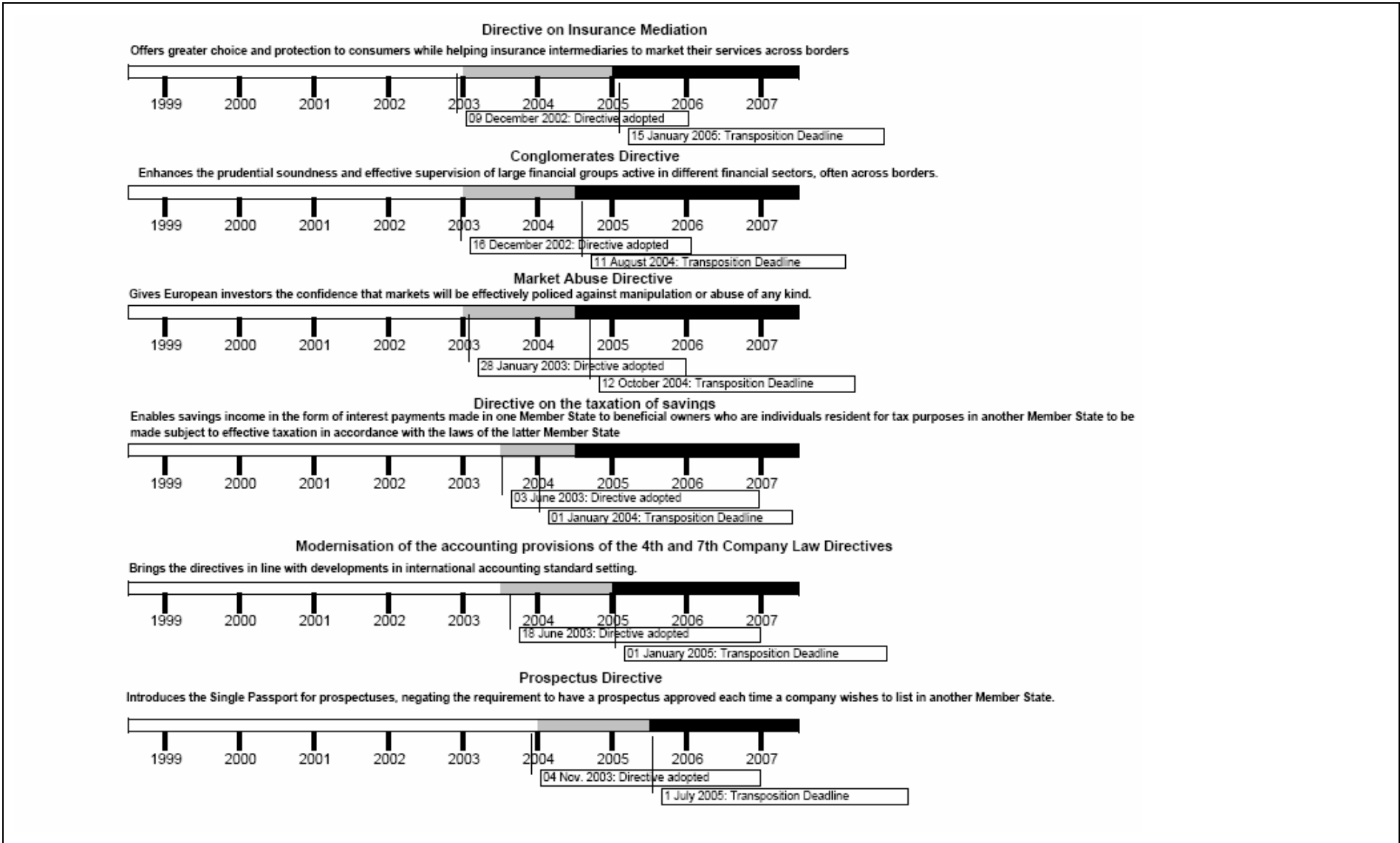
European legislation emphasises the importance of information provision. However, unless consumers themselves develop the skills and knowledge needed to understand increasingly complex financial products, consumers cannot make well-informed (investment) decisions on the basis of this information.

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.

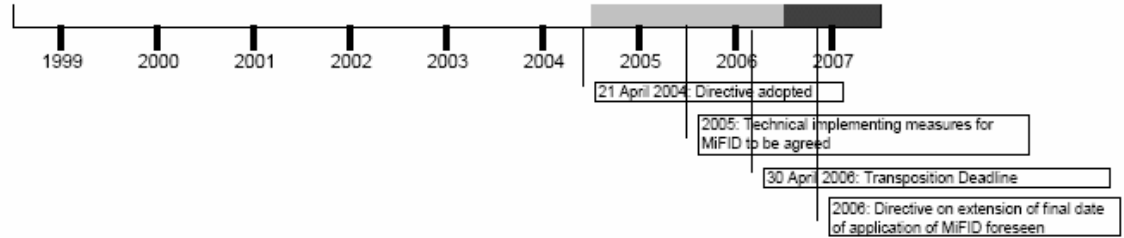






Markets in Financial Instruments Directive

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



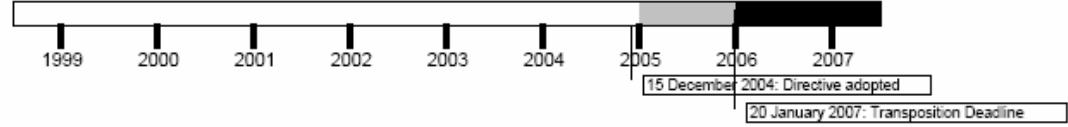
Take-Over Bids Directive

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

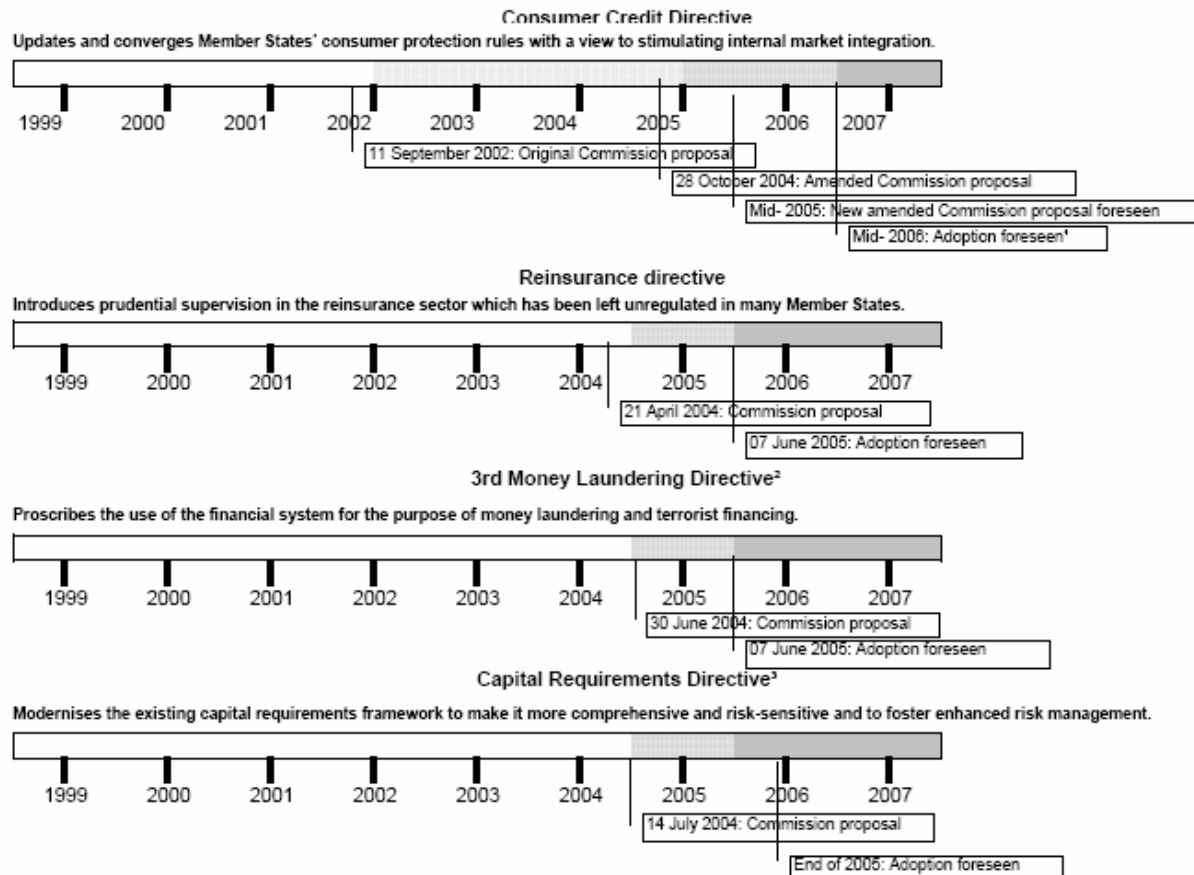


Transparency Directive

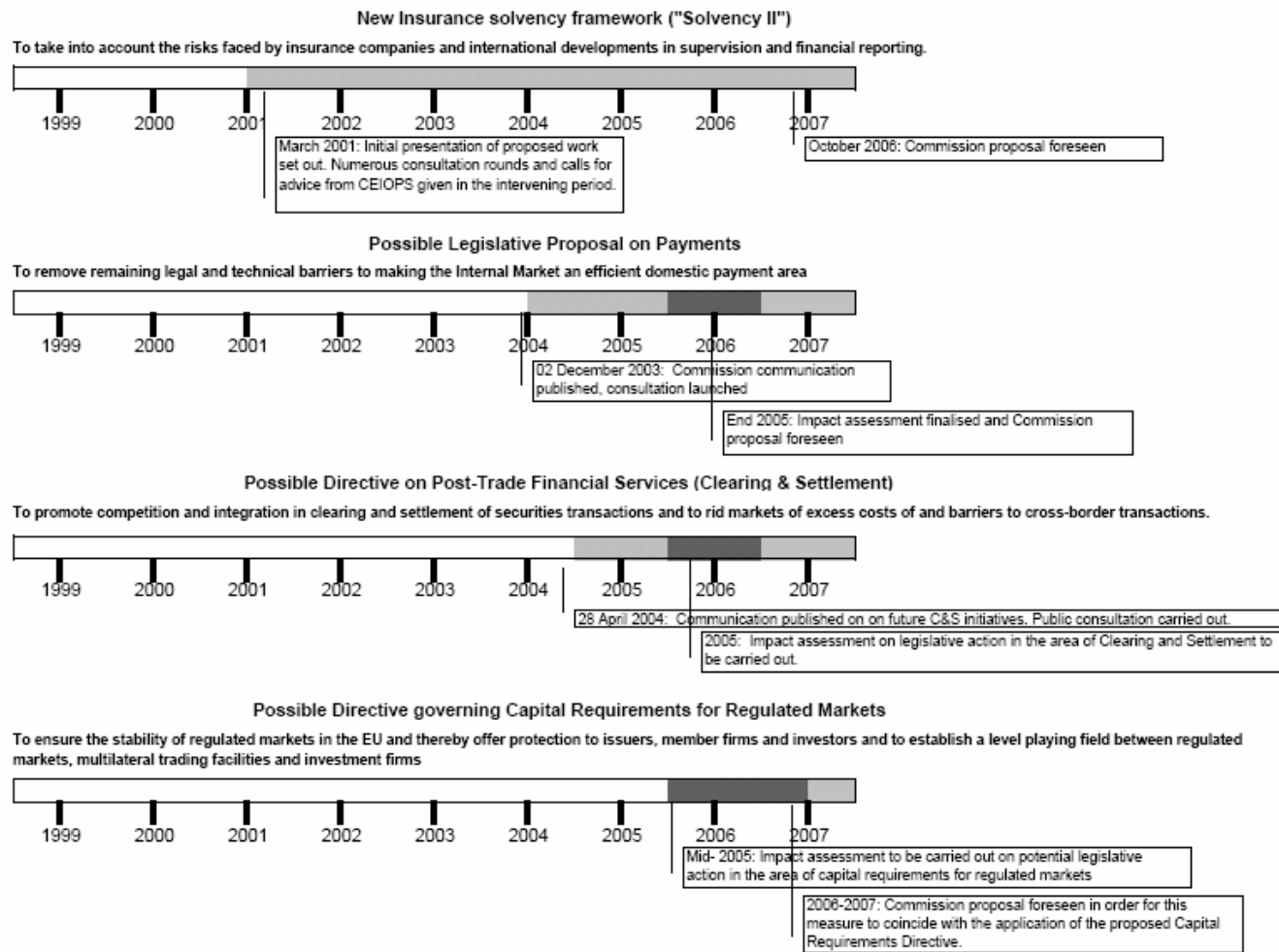
Raises the quality of information available to investors on companies' performance and financial position as well as on changes in major shareholdings.



(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



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