



KOMISIJA EVROPSKIH SKUPNOSTI

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**ZELENA KNJIGA**

**Zelena knjiga o politiki finančnih storitev (2005–2010)**

(predložila Komisija)

## KAZALO

SPLOŠNI CILJ POLITIKE.....	3
1. KEY POLITICAL ORIENTATION.....	4
2. BETTER REGULATION, TRANSPOSITION, ENFORCEMENT AND CONTINUOUS EVALUATION .....	8
3. CONSOLIDATION OF FINANCIAL SERVICES LEGISLATION OVER THE 2005-2010 PERIOD .....	9
3.1. FINISH REMAINING MEASURES .....	9
3.2. EFFICIENT AND EFFECTIVE SUPERVISION .....	10
3.3. ENABLING CROSS-BORDER INVESTMENT AND COMPETITION .....	10
3.4. THE EXTERNAL DIMENSION.....	10
4. POSSIBLE, TARGETED NEW INITIATIVES.....	11

### **PRILOGA I**

- (1) **GOSPODARSKE KORISTI FINANČNE INTEGRACIJE**
- (2) **BOLJŠA UREDITEV, PRENOS, UVELJAVLJANJE IN STALNO  
OCENJEVANJE**
- (3) **USPEŠEN IN UČINKOVIT NADZOR**
- (4) **OVIRE ZA ČEZMEJNO ZDRUŽEVANJE**
- (5) **ZUNANJA RAZSEŽNOST**
- (6) **UPRAVLJANJE S SREDSTVI**
- (7) **MALOPRODAJNE FINANČNE STORITVE**

### **PRILOGA II**

**KOLEDAR S SPREJETIMI UKREPI, PREDMET POGAJANJ, V PRIPRAVI**

# ZELENA KNJIGA

## O POLITIKI FINANČNIH STORITEV(2005–2010)

(Besedilo velja za EGP)

Splošni cilj politike finančnih storitev<sup>1</sup> Komisije za naslednjih pet let je:

- utrditev napredka k integriranemu, odprtemu, konkurenčnemu in gospodarsko učinkovitemu evropskemu trgu ter odstranitev preostalih gospodarsko pomembnih ovir;
- spodbujanje trga, pri katerem lahko finančne storitve in kapital prosto krožijo v EU pri najnižjih možnih stroških – ob ustreznih in učinkoviti ravni nadzora varnega in skrbnega poslovanja, finančne stabilnosti in visoki ravni varstva potrošnikov;
- izvajanje, uveljavljanje in stalno ocenjevanje obstoječega zakonodajnega okvira, dosledno izvajanje boljše ureditve, pri vseh nadaljnjih pobudah, izboljšanje konvergence pri nadzoru in krepitev evropskega vpliva na finančne trge.

Ta knjiga predstavlja predhodna stališča Komisije glede prednostnih nalog politike finančnih storitev za naslednjih pet let. V njej se upoštevajo mnoga konvergentna mnenja, izražena v dvoletnem postopku posvetovanja, začetim z delom štirih strokovnih skupin, ki mu je sledilo široko javno posvetovanje<sup>2</sup>. Druge vzporedne pobude vključujejo poročilo o finančni integraciji Odbora EU za finančne storitve<sup>3</sup> in osnutek poročila Odbora za gospodarske in denarne zadeve Evropskega parlamenta o trenutnem stanju integracije finančnih trgov EU<sup>4</sup>.

**Komisija bi sedaj rada preučila stališča glede svojih prvotnih zamisli o prihodnosti evropske politike finančnih storitev. Odgovore je treba poslati do 1. avgusta 2005 na elektronski naslov: [markt-consult-financialservices@cec.eu.int](mailto:markt-consult-financialservices@cec.eu.int). Odgovori bodo na spletni strani Komisije – razen v primeru izrecnega nasprotovanja.**

Pripombe in nadaljnje pripravljalo delo znotraj Komisije se bodo upoštevala pri oblikovanju **končnega programa o politiki finančnih storitev**, ki bo v obliki bele knjige predložen **novembra 2005**.

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<sup>1</sup> Kot del splošnih strateških ciljev Komisije za obdobje 2005–2009, glej COM(2005) 12 z dne 26.1.2005: glej Oddelek 1.1. odstavek 2 in COM(2005) 24 z dne 2.2.2005, točka 3.2.1.

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

<sup>3</sup> Poročilo predloženo v preučitev ministrom EU za finančne zadeve dne 2.6.2004, v omejenem številu izvodov.

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

## 1. OSNOVNA POLITIČNA USMERITEV

V zadnjih šestih letih je bil storjen velik napredek k integriranemu evropskemu kapitalskemu in finančnemu trgu. Večina potrebnih pravil, predstavljenih v akcijskem načrtu za področje finančnih storitev (FSAP), je bila sprejeta v roku in se sedaj uveljavlja. Evropsko odločanje in regulativne strukture so postali bolj racionalni in učinkoviti zaradi "postopka Lamfalussy"<sup>5</sup>. Med evropskimi institucijami in udeleženci na trgu se je razvilo stalno, sistematično sodelovanje. Zaradi uveljavitve eura je naraslo politično zaupanje v postopek integracije.

Vendar delo še ni končano. Z obdobjem 2005–2010 se začinja nova faza z zelo drugačnimi cilji:

- konsolidacija že obstoječe zakonodaje z le nekaj novimi pobudami;
- zagotovitev učinkovitega prenosa evropskih predpisov v nacionalno ureditev in bolj dosledno uveljavljanje s strani nadzornih organov;
- stalno naknadno ocenjevanje, pri katerem bo Komisija skrbno spremljala uporabo teh pravil v praksi – in njihov vpliv na evropski finančni sektor.

Države članice, regulativni organi in udeleženci na trgu morajo izpolnjevati svojo vlogo. Po potrebi bo Komisija brez odlašanja predlagala spremembo ali celo razveljavitev ukrepov, ki ne prinašajo pričakovanih koristi. Tak pristop je bistven za zagotovitev kar najboljšega delovanja že tako težko pridobljenega evropskega regulativnega okvira – v korist udeležencev na trgu, več kakor 20 milijonov evropskih podjetij in 450 milijonov prebivalcev ter tako tudi za evropsko gospodarstvo v celoti.

Program za preteklih šest let je bil utemeljen na zamisli, da bodo aktivni, likvidni in dinamični finančni trgi zagotovili učinkovito porazdelitev in zagotovitev kapitala ter storitev v celotnem evropskem gospodarstvu – od grosizma do maloprodaje – ter postavili temelje za višjo dolgoročno rast in odpiranje novih delovnih mest v gospodarstvu. Ključne besede zakonodajnih predlogov FSAP so bile: čezmejna konkurenca, dostopnost trga, večja preglednost, integriteta trga, finančna stabilnost in učinkovitost. Na splošno je zakonodaja FSAP ostala zvesta tem usmeritvenim načelom – in ta veljajo še danes.

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<sup>5</sup> Poročilo Lamfalussy, objavljeno dne 15.2.2001 se nahaja na spletni strani Komisije: [http://europa.eu.int/comm/internal\\_market/securities/lamfalussy/index\\_en.htm](http://europa.eu.int/comm/internal_market/securities/lamfalussy/index_en.htm) glej tudi opombo 8v Prilogi I.

Gospodarske koristi evropske finančne integracije (Priloga 1) so nesporne. To je bilo tudi potrjeno v lizbonski strategiji<sup>6</sup> in v vmesnem pregledu te strategije, ki ga je izvedla Komisija in je še posebno poudaril rast ter delovna mesta<sup>7</sup>.

Uskladitev nacionalnih regulativnih pristopov s skupnim evropskim regulativnim sistemom predstavlja izziv: povzroča precejšnje predhodne uskladitvene stroške za nacionalne organe, pristojne za uveljavljanje, in udeležence na trgu. Te prehodne težave same po sebi predstavljajo izziv – predvsem zato, ker so večinoma nakopičene v kratkem obdobju (2005–2007). Vendar pa skrbi glede teh prehodnih stroškov ne smejo zamegliti širših gospodarskih koristi. Druga možnost je očitna: razdrobljen in nezadostno delujoč finančni trg in/ali skupek nacionalnih "poolov" likvidnosti, odvisnih od različnih, neusklajenih praks obvladovanja tveganja in višjih stroškov kapitala. FSAP je ustvaril zakonodajni okvir, ki bo izdajateljem, vlagateljem in ponudnikom finančnih storitev omogočil transakcije na vseevropski ravni brez nepotrebnih pravnih ovir. Sedaj je najbolj pomembno, da bi ta sistem dobro deloval.

Danes gospodarski in tržni kazalniki kažejo, da poteka evropska finančna integracija v mnogih sektorjih: na grosističnih trgih; na borzah; v infrastrukturi finančnih trgov, kakor sta na primer kliring in poravnava. To je ustvarilo boljše pogoje za vse uporabnike finančnih storitev. Sprožil se je odziv evropskega trga, čeprav ostaja še mnogo dela na zgoraj navedenih področjih in drugih področjih v maloprodaji in grosizmu. Področje maloprodajne distribucije je na primer še vedno razdrobljeno in na nekatere trge je nemogoče prodreti. Te ovire je treba natančno oceniti, predvsem pa ugotoviti, ali predstavljajo pomembne gospodarske ovire za prosti pretok kapitalskih in finančnih storitev.

Dobro delujoč trg tveganega kapitala je strateško pomemben element za spodbujanje novih in inovativnih podjetij, podjetništva, rasti produktivnosti in trajnostnega razvoja gospodarske rasti v Evropi. Trenutno je evropski trg za tvegani kapital precej manj učinkovit kakor na primer tak trg v ZDA. Zato je pomembno opredeliti prednostne naloge pri kakršnih koli nadaljnjih pobudah na tem področju.

Strogo dosleden pristop s ciljem "boljše ureditve" se bo stalno uporabljal: od zasnove politik do odprtega in preglednega posvetovanja na vseh ravneh, vzpostavljanja temeljitih in prepričljivih ocen gospodarskega vpliva pred sestavo novega predloga in naknadnega ocenjevanja. To je bistveno za zmanjšanje upravnih stroškov pri finančnih organih in izdajateljih ter za povečanje konkurenčnosti evropske finančne panoge.

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<sup>6</sup> Evropski svet v Lizboni je 23. in 24. marca 2000 sprejel nov strateški cilj EU za prvo desetletje: namreč postati najbolj konkurenčno in dinamično gospodarstvo znanja na svetu, ki bo temeljilo na trajnostnem gospodarskem razvoju z več in boljšimi delovnimi mesti ter večjo socialno kohezijo.

<sup>7</sup> Rast in delovna mesta: "Nov začetek za lizbonsko strategijo", februar 2005, [http://europa.eu.int/growthandjobs/pdf/COM2005\\_024\\_en.pdf](http://europa.eu.int/growthandjobs/pdf/COM2005_024_en.pdf)

Te pristope naj bi uporabila tudi Evropski parlament in Svet zato, da predlogi Komisije na podlagi dokazov ne bi po nepotrebem postali neobvladljivo zapleteni. Države članice bi se morale zlasti izogibati nenehnim regulativnim dodatkom, ki posegajo na področja izven samih direktiv – tako imenovanih "olepšav" ("goldplating") – s katerimi onemogočajo ugodnosti, ki jih omogoča en sam sklop pravil EU, in nalagajo nepotrebno upravno breme ter stroške evropski industriji<sup>8</sup>.

Kakor prej je treba na podlagi dokazov pričakovati, da bo vsak nov evropski zakonodajni predlog o finančnih storitvah ali vsako izvedbeno pravilo prispevalo k precejšnjim gospodarskim koristim v smislu učinkovitosti in stabilnosti. Merilo bi morala biti stopnja, do katere so ukrepi ugodno vplivali na čezmejno poslovanje in izboljšali konkurenčnost evropskih finančnih trgov ter hkrati ščitili notranjo stabilnost

Komisija bo s svojim pristopom še naprej pridobivala čim večje soglasje v kateri koli pripravljalni fazi ter sodelovala tesno in pregledno z državami članicami ter Evropskim parlamentom, z nadzornimi mrež EU (CEBS<sup>9</sup>, CEIOPS<sup>10</sup> in CESR<sup>11</sup>), z Evropsko centralno banko, z udeleženci na trgu in v prihodnosti s še bolj intenzivnim sodelovanjem s skupinami potrošnikov<sup>12</sup>. Regulativni pristopi se v državah članicah razlikujejo – umetnost evropske zakonodaje na teh celovitih področjih je poiskati ravnotežje za čimbolj ustrezno služenje evropskim interesom. Vsaka zakonodaja mora spoštovati načela subsidiarnosti in sorazmernosti iz Pogodbe<sup>13</sup> ter krepiti konkurenčnost.

Treba je pospešiti razpravo o evropski konvergenci nadzora. Nadzorni sistem mora imeti potrebne instrumente za učinkovito delovanje ureditve evropskih finančnih storitev in tako pospešiti vseevropsko poslovanje. Rezultat mora biti tak, da zagotavlja popolno demokratično odgovornost do držav članic in Evropskega parlamenta. V skladu s tem je pomembno sprejetje evropske Ustave<sup>14</sup> zaradi srednjeročne kontinuitete in trajnosti postopka Lamfalussy<sup>15</sup>.

Na podlagi vzpostavljenega regulativnega okvira in nadzornih struktur, Komisija predvideva, da se bodo sinergije z različnimi področji politik – zlasti s politiko konkurence in potrošniško politiko – v naslednjih petih letih

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<sup>8</sup> Glej Priporočilo Komisije o najboljših praksah za prenos zakonodaje EU v zakonodajo držav članic, SEC(2004) 918.

<sup>9</sup> Odbor evropskih bančnih nadzornikov, ustanovljen 1. januarja 2004.

<sup>10</sup> Odbor evropskih nadzornikov za zavarovanja in poklicne pokojnine, ustanovljen 24. novembra 2003.

<sup>11</sup> Odbor evropskih zakonodajalcev za vrednostne papirje, ustanovljen 7. junija 2001.

<sup>12</sup> Forum FIN-USE strokovnjakov za finančne storitve Komisiji že zagotavlja dragocene podatke z vidika uporabnikov.

<sup>13</sup> Kadar se zakonodajne rešitve zdijo utemeljene, se sprejmejo na ravni Unije le, če so se lokalni ukrepi jasno pokazali kot neuspešni ali neizvedljivi; njihovi učinki ne sme preseči tistih, ki so potrebni za dobro delovanje na notranjem trgu.

<sup>14</sup> "Določbe o časovni omejitvi dejavnosti" na področju zavarovalništva bodo začele veljati z leta 2007. V skladu s temi določbami bodo pristojnosti, ki so bile naložene Komisiji za sprejetje izvedbenih ukrepov v postopku komitologije (raven 2 postopka Lamfalussy), prenehale veljati, razen če se Svet in Evropski parlament izrecno ne odločita za njihovo podaljšanje (kar bo predlog Komisije v postopku soodločanja).

<sup>15</sup> Predvsem (novi) člen I-36, na podlagi katerega imata Evropski parlament in Svet pravico preklica zaradi nadzora delegiranih evropskih uredb, ki jih sprejme Komisija.

povečale. Objavljene so bile že nekatere sektorske raziskave na področju finančnih storitev. Komisija želi, da bi udeleženci na trgu bili bolj učinkoviti in proaktivni pri doslednem javljanju jasnih kršitev ali nekonkurenčnega vedenja pri katerem koli viru – najprej na nacionalni ravni in nato še Komisiji.

Druga horizontalna in dopolnilna področja politike (upravljanje podjetij, reforma prava družb, računovodstvo, predpisana revizija) so tudi izjemnega pomena pri pridobivanju zaupanja in doseganju preglednosti na evropskih finančnih trgih. Čeprav je delo na teh področjih izven področja uporabe te knjige, se bo nadaljevalo v skladu z dogovorjenimi roki<sup>16</sup> in s pristopom, ki temelji na načelu “boljše ureditve” in poenostavitve. Podjetja, računovodje, revizorji in drugi udeleženci na trgu morajo pri svojem delu upoštevati najvišje etične standarde. Nacionalni nadzorni organi morajo zagotoviti, da se ti standardi učinkovito uporabljajo, tudi pri off-shore finančnih središčih. V nasprotnem primeru se bosta pritisk trga in politični pritisk za doseg dodatnega regulativnega posega na teh ali drugih področjih povečala. To vprašanje se nadalje kaže v reviziji četrte in sedme direktive o pravu družb v zvezi z računovodskimi standardi. Cilj je krepitev dolžnosti razkritja podatkov, kadar se uporabljajo subjekti, ustanovljeni v finančnih središčih off-shore.

Razprava o prihodnjem upravljanju, financiranju in politični odgovornosti svetovnih organov, ki določajo standarde, kakor je Uprava za mednarodne računovodske standarde, ima vedno večji politični pomen. Komisija meni, da mora biti javni nadzor takšnih struktur okrepljen, da se zagotovi ustrezno upoštevanje zanimanja interesnih skupin, zadovoljivo preglednost, upoštevanje predpisanih postopkov in trajno financiranje.

Navzven ima Evropa veliko strateško priložnost za vplivanje na regulativne parametre nastajajočega svetovnega finančnega trga. Zato je pomembno poglobljati dialog med finančnimi trgi EU in ZDA ter krepiti finančne odnose z Japonsko, Kitajsko in na primer Indijo (glej 3.4.). Komisija podpira razširitev okvirov takšnih dialogov, zato da bi bili bolj usmerjeni v prihodnost in bi bolj upoštevali prispevke udeležencev na trgu. Nadaljnja prizadevanja za odprtje finančnih trgov v tretjih državah se bodo odvijala v okviru kroga pogajanj v Dohi ter v okviru dvostranskih in regionalnih tržnih sporazumov.

Komisijo pri interesnih skupinah zanima:

- ali se strinjajo s splošnimi cilji politike Komisije v naslednjih petih letih;
- ali se strinjajo z osnovno politično usmeritvijo, kakor je opisana zgoraj.

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<sup>16</sup> Upravljanje podjetij in akcijski načrt prava družb; vključno z ukrepi o: izvajanju IAS, osmi direktivi o pravu družb; sprejetju IAS v tretjih državah, kakor so na primer ZDA; preglednosti struktur upravljanja podjetij; izboljšanju delničarskih struktur itd.

## 2. BOLJŠA UREDITEV, PRENOS, UVELJAVLJANJE IN STALNO OCENJEVANJE

Izboljšanje gospodarskih rezultatov in vzpostavitev blaginje bosta v širšem smislu odvisna od zmožnosti evropskih institucij, nadzornih organov in udeležencev na trgu zagotoviti, da se obstoječa pravila dosledno uporabljajo in uveljavljajo – tako da bo dobra praksa postala norma (Priloga I, Oddelek II). Na ta način se ustvarijo za vse enaki pogoji – na podlagi zanesljive in natančne razlage prava Skupnosti – brez pravne negotovosti in nejasnosti. To tudi pomeni, da se morajo mehanizmi uveljavljanja v državah članicah okrepiti in medsebojno povezati, med drugim v okviru evropskih nadzornih mrež. Taka skupna odgovornost je največji izziv v Evropski Uniji petindvajsetih držav članic – z možnostmi še nadaljnjih širitev.

Prednosti so:

- stalno oblikovanje odprte in pregledne politike na podlagi široke uporabe posvetovalnih mehanizmov na vseh ravneh;
- poenostavitev in konsolidacija vseh primernih (evropskih in nacionalnih) pravil o finančnih storitvah<sup>17</sup>;
- približevanje standardov in praks na nadzorni ravni s hkratnim upoštevanjem politične odgovornosti in sedanjih institucionalnih omejitev;
- delo z državami članicami za izboljšanje prenosa in za zagotovitev doslednega izvajanja;
- ocena, ali obstoječe direktive in uredbe dajejo pričakovane gospodarske koristi ter razveljavijo ukrepe, ki tega preizkusa ne opravijo, in
- zagotovitev pravilnega izvajanja in uveljavljanja, po potrebi tudi s postopki za ugotavljanje kršitev, temelječimi na obstoječi zakonodaji in sodni praksi.

Komisijo pri interesnih skupinah zanima:

- ali se strinjajo z opredeljenimi prednostnimi ukrepi in
- kateri dodatni ukrepi morajo biti sprejeti za spodbujanje dosledne uporabe in uveljavljanja evropske zakonodaje.

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<sup>17</sup> Nekaj pilotnih projektov za poenostavitev je lahko izbranih v naslednjih letih. Koristno bi bilo opraviti študijo izvedljivosti zato, da bi se lahko ugotovilo, ali bi se sčasoma lahko vsa pravila združila v en sam in usklajen zakon (neke vrste "pravilnik o finančnih storitvah").



### 3. KONSOLIDACIJA ZAKONODAJE O FINANČNIH STORITVAH ZA OBDOBJE 2005–2010

#### 3.1. DOKONČATI PREOSTALE UKREPE

##### SEDANJA ZAKONODAJA IN UKREPI V PRIPRAVI

V naslednjih dvanajstih mesecih je najpomembneje dokončati postopek glede preostalih nerešenih zadev, ki so v Evropskem parlamentu in na Svetu še v fazi pogajanj, ter pomembnih ukrepov, ki jih Komisija še pripravlja.

Med slednjimi so (morebitna) direktiva o finančnih storitvah po trgovanju (kliring in poravnava), nov okvir v zvezi s solventnostjo zavarovalnic, (morebitni) zakonodajni predlog o plačilih (glej Prilogo II). Ta priprava vključuje tako temeljite ocene gospodarskega vpliva kakor širša posvetovanja z interesnimi skupinami.

##### PODROČJA, NA KATERIH SE KOMISIJA LAHKO ODLOČI, DA NE BO PREDLOŽILA PREDLOGA

Komisija se zavezuje, da bo ukrepala samo kadar evropske pobude prinašajo nesporne gospodarske koristi za industrijo, trg in potrošnike. Konkretno to pomeni, da Komisija trenutno preučuje področje **bonitetnih agencij** in področje **finančnih analitikov**, za katera je treba – po prejetju nasveta CESR in CEBS – odločiti, ali je na tej stopnji potrebna dodatna zakonodaja ali zadostujejo trenutne določbe iz direktive o zlorabi trga ter samoregulativni<sup>18</sup> mehanizmi in mehanizmi spremljanja. Že zdaj je jasno, da Komisija ne bo predlagala izvedbenih ukrepov iz **direktive o ponudbah za prevzem**.

Vendar, če se Komisija ne bi odločila za predlaganje zakonodaje na tem področju in drugih, takrat ne bo oklevala ponovno preučiti to stališče, če bi nadaljnji razvoj trga nakazal, da je tak močan poseg potreben.

##### PODROČJA, NA KATERIH LAHKO KOMISIJA PONOVO PREUČI SVOJ PREDLOG

Po sporazumu držav članic k **Haaški konvenciji** (večstranski pogodbi o kolizijskih sporih glede vrednostnih papirjev, ki jih ima posrednik<sup>19</sup>) je Komisija sestavila predlog za podpis, vendar pa so nedavno nekatere države članice in ECB izrazili svoje pomisleke glede Konvencije. Komisija bo do konca leta 2005 pripravila pravno oceno, s katero bo preučila te pomisleke, in se nato odločila, ali so spremembe predloga za ta podpis potrebne ali ne.

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<sup>18</sup> Na primer Kodeks Mednarodnega združenja nadzornikov trga vrednostnih papirjev (International Organisation of Securities Commissions – (IOSCO).

<sup>19</sup> V tem primeru se zdi zelo uporabna skupna pravna formula za opredelitev lastniških pravic v primerih, kadar ima vrednostne papirje v lasti veriga finančnih posrednikov v različnih državah.

### **3.2. USPEŠEN IN UČINKOVIT NADZOR**

Z razvojem evropske finančne integracije se pojavljajo novi izzivi za nadzornike. Spremljanje čezmejnih tveganj postaja bolj pomembno in čeprav bo integracija okrepila splošno stabilnost, se bo povečala možnost za pojav "učinkov prelitja", kakor je odpoved sistema, ki vpliva na več finančnih trgov in/ali na skupine, ki delujejo na ravni celotne EU. Komisija meni, da je treba takšne primere obravnavati s pristopom, ki je postopen in od spodaj navzgor (Priloga I, Oddelek III).

### **3.3. OMOGOČANJE ČEZMEJNIH VLAGANJ IN KONKURENCE**

Konsolidacijo v sektorju finančnih storitev naj bi usmerjal trg. Istočasno morata biti na nekaterih področjih zagotovljeni finančna trdnost in stabilnost finančnega sistema. Stroški in ovire pri čezmejnih prenosih so ogromna zavora pri čezmejnem vlaganju in ekonomski racionalizaciji v Evropi. Komisija je v predhodnem poročilu opredelila možne ovire in pozvala interesne skupine, da v skladu s svojim mnenjem povedo, katere ovire so najbolj zaviralne<sup>20</sup>. Odstranitev ali samo zmanjšanje teh neupravičenih ovir bo okrepilo konkurenčnost sektorja in gospodarstva na splošno – ter tako spodbudilo rast in odpiranje novih delovnih mest (Priloga Oddelek IV).

### **3.4. ZUNANJA RAZSEŽNOST**

Komisija bo skrbno spremljala, ali vse države kandidatke izpolnjujejo svoje obveznosti na področju finančnih storitev. Poleg tega sta najbolj pomembna krepitev evropskega vpliva in zagotovitev konkurenčnosti evropskega finančnega sektorja v svetu. Finančne storitve so poslovno dejavnost v svetovnem merilu – dogajanje v posamezni državi vpliva na druge. V Oddelku V Priloge I so poudarjeni ugotovljeni (regulativni) cilji in napredek pri oblikovanju odprtega, predhodnega regulativnega dialoga z ZDA in Kitajsko. Komisija bi v naslednjih petih letih tudi želela poglobiti finančne odnose z drugimi državami, kakor je Japonska, in če bo mogoče tudi z Indijo.

Komisijo pri interesnih skupinah zanima:

- ali se strinjajo z opredeljenimi ukrepi, pri katerih bi se Komisija lahko odločila, da jih ne bo izvedla, ali obstajajo druga konkretna področja, na katerih naj Komisija ne daje predlogov, ki so sedaj v pripravi, ali obstajajo področja, pri katerih bi Komisija morala razmisliti, da zanje ne bi bila več pristojna;
- njihova ocena, ali sedanji regulativni in nadzorni okvir zadostuje za rešitev izzivov nadzora v naslednjih letih, katere so pomanjkljivosti in kako bi se jih dalo najbolj učinkovito rešiti;
- kateri so cilji, sektorji, ki jih je treba vključiti, in katera so

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

prednostna področja v regulativnih dejavnostih in dejavnostih sodelovanja v svetovnem merilu.

#### 4. MOŽNE NOVE IN CILJNO NARAVNANE POBUDE

V skladu z mnenji, danimi v dvoletnem postopku posvetovanja, ki se je začel z delom štirih strokovnih skupin, je Komisija jasno določila dve področji politike, na katerih lahko pobude prinesejo koristi evropskemu gospodarstvu: **upravljanje s sredstvi** (Priloga I, Oddelek VI) in **maloprodajne finančne storitve**. Delo na teh področjih bo potekalo po načelu od spodaj navzgor, bo posvetovalno in bo delovalo v skladu s trgom.

Na podlagi naknadnega končnega pregleda postopka FSAP je bilo ugotovljeno, da trg maloprodajnih finančnih storitev kot področje potrebuje posebno pozornost (Priloga I, Oddelek VII). Medtem ko je bil dosežen velik napredek pri integraciji finančnih trgov, pa trgi maloprodajnih finančnih storitev – torej finančne storitve za potrošnike – ostajajo razdrobljeni.

Naloga Komisije je olajšati zagotovitev maloprodajnih finančnih storitev v Evropi. Pri zagotavljanju čezmejnih storitev obstajajo štiri “prodajne poti”: (i) potrošnik kupi storitev od ponudnika iz druge države članice s potovanjem v to državo članico; (ii) podjetje trži/prodaja potrošnikom iz druge države članice, ne da bi bilo v njej ustanovljeno; (iii) podjetje se ustanovi v več kakor eni državi članici in svojo ponudbo prilagodi lokalnem trgu; in (iv) storitve so zasnovane vseevropsko, tudi kadar se zagotavljajo lokalno.

Čeprav se zdi pristop z uvajanjem vseevropskih potnih listov za podjetja in potrošnike najbolj ugoden, se zdaj razpravlja o drugih možnih režimih, kakor so “26. režimi” za tiste subjekte in potrošnike, ki želijo delovati prek meje, še vedno pa ostaja 25 sklopov nacionalnih pravil nedotaknjenih. Koristnost “26. režimov” pa je treba še dokazati in težko bo doseči soglasje o neobveznih evropskih standardih, oblikovanih samo za en proizvod. Vendar bo Komisija upoštevala sedanjo razpravo in se bo odzvala pozivu, da je treba še naprej raziskovati 26. režime, tako da bo opravila študijo izvedljivosti, na primer na področju enostavnega (časovno omejenega življenjskega) zavarovanja in varčevalnih programov.

Komisija zato predlaga ustanovitev skupine foruma za posebne maloprodajne proizvode, sestavljenega iz strokovnjakov na tem področju, ki bi predstavljali interese industrije in potrošnikov, ugotavljali morebitne ovire in predlagali možne rešitve. To delo bo temeljilo na obširnih raziskavah.

#### PODROČJA MOŽNEGA UKREPANJA V PRIHODNOSTI

Hipotekarni kredit je eno izmed področij, na katerem bo nadaljnja integracija maloprodaje verjetno koristna – medtem ko ne sme biti

omejeno število proizvodov na trgu; druga zelena knjiga, načrtovana za poletje 2005, bo obravnavala 48 priporočil iz poročila skupine foruma za hipotekarni kredit. Konkretna pobude se lahko napovejo – po temeljitem posvetovanju – najprej v letu 2006.

Na podlagi sklepov strokovnih skupin in mnenj, izraženih med javnim posvetovanjem, bi bilo treba v prihodnosti obravnavati naslednja področja:

- **kodifikacija in morebitna poenostavitev obstoječih pravil glede zahtev obveščanja**, predvsem zaradi zagotavljanja doslednosti in skladnosti med različnimi besedili<sup>21</sup>;
- **finančno posredovanje**, zlasti tako, da se dovoli, da čezmejne storitve opravljajo strokovno izkušeni in zanesljivi posredniki, ob upoštevanju popolne preglednosti v zvezi s pristojbinami in odnosi s ponudniki. Na tem področju je bilo delo že opravljeno<sup>22</sup>. Glede na razvoj v zvezi s proizvodi in strukturo ponudnikov finančnih storitev, je treba preučiti potrebo po nadaljnji uskladitvi pravil glede vodenja poslov, prodajnih nasvetov in dolžnosti razkritja podatkov;
- **bančni računi**: zlasti preučitev vseh možnih ovir za čezmejno odpiranje bančnih računov in tudi vprašanj glede ravnanja z njimi, njihove prenosljivosti in zapiranja. Zdi se, da so posebne težave povezane na primer z nerezidenčnostjo in zahtevami po identificiranju.

Komisijo pri interesnih skupinah zanima:

- ali se strinjajo z novimi prednostnimi področji;
- katere so prednosti/slabosti različnih oblik čezmejnega zagotavljanja storitev, ali si podjetja želijo razvijati 26. režim in katerim poslovnim dejavnosti bi to najbolj koristilo;
- kako potrošnikom omogočiti, da bolj učinkovito uporabljajo finančne proizvode in ali to pomeni, da je za to potrebnih več strokovnih in neodvisnih nasvetov ter boljše izobraževanje ali usposabljanje na finančnem področju;
- ali se strinjajo z vprašanji iz zgornjega seznama maloprodajnih proizvodov in ali bodo predlagali druga področja, na katerih bi bilo koristno dodatno ukrepanje na ravni EU.

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<sup>21</sup> Komisija razvija skupni referenčni okvir kot sredstvo za izboljšanje skladnosti evropskega pogodbenega prava.

<sup>22</sup> V okviru direktive o zavarovalnem posredovanju in direktive o trgih finančnih instrumentov.

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

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

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

So that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Preparation of initiatives.**

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

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

#### ***Simplification***

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

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

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

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

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



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

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

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

### **Transposition**

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

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

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

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

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

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

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

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

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

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

### ***Transposition workshops***

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

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

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

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

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

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

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

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

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

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

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

### **Ex-post evaluation**

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

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

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

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

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

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

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

### **Challenges**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### ***Background***

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

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

### ***Possible explanations***

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

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

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

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

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

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

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

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



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

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

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

### **Global dimension**

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

Three regulatory objectives can be identified:

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

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

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

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

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

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

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

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

## Annex I, Section VI – Asset management

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

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

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

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

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

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

### **Retail Financial Services integration is needed**

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

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

### **The way forward**

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

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

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

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

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

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

### **The consumer perspective**

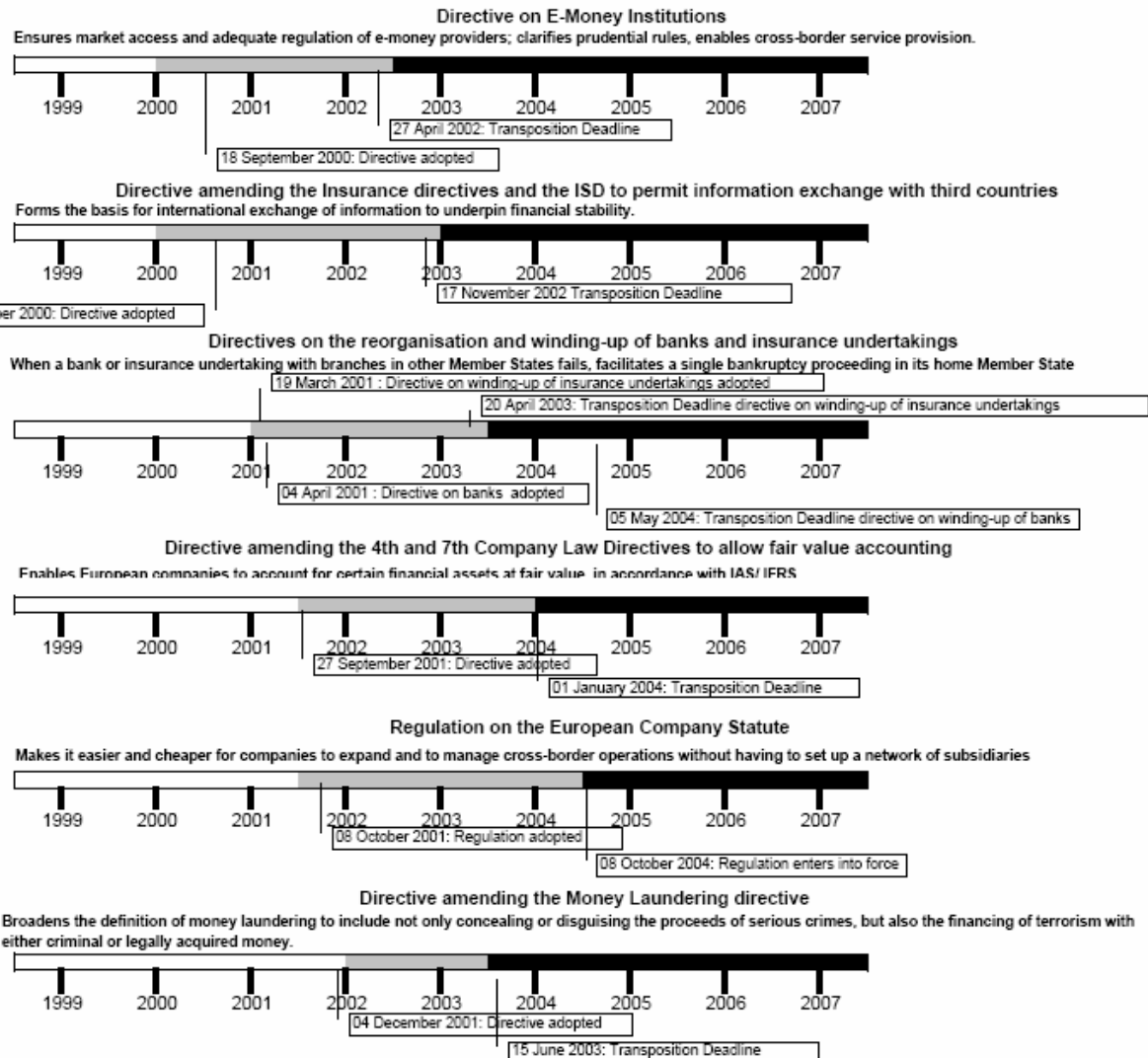
The Commission is committed to listen to all interested parties before coming up with new initiatives. The Commission is committed to ensure the consumer and user perspective is heard<sup>46</sup>, and that the consumer interest is prominent in the major debates. The consumer and user perspective can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

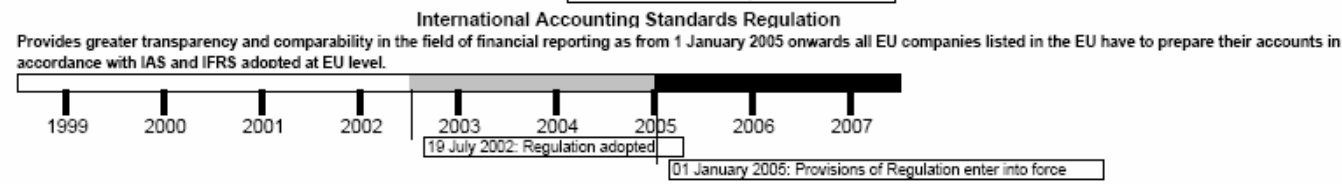
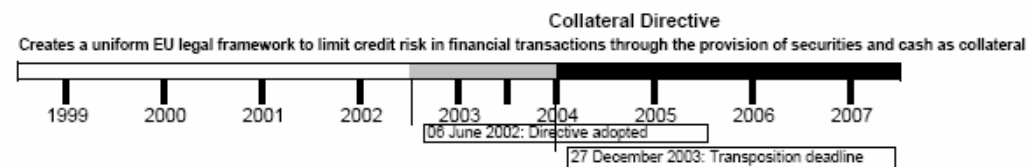
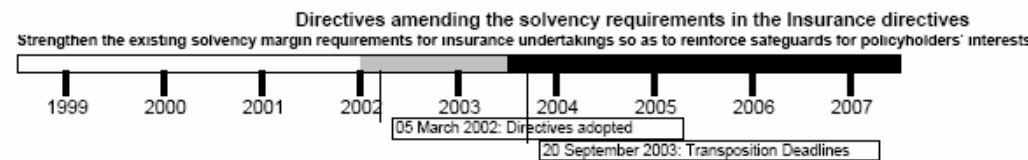
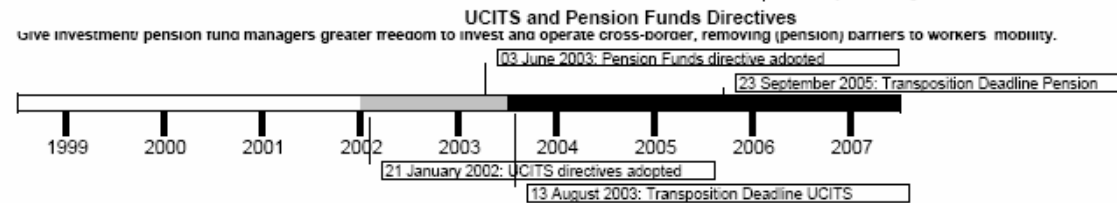
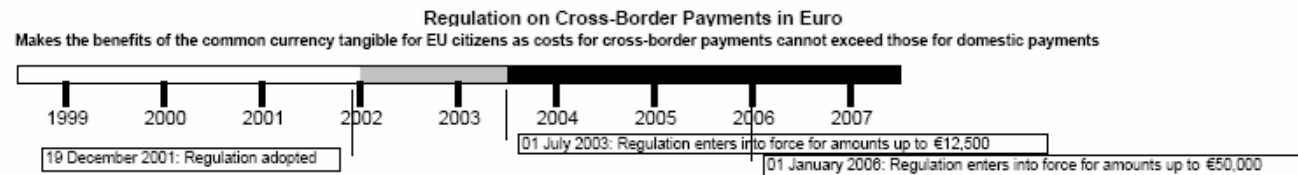
European legislation emphasises the importance of information provision. However, unless consumers themselves develop the skills and knowledge needed to understand increasingly complex financial products, consumers cannot make well-informed (investment) decisions on the basis of this information.

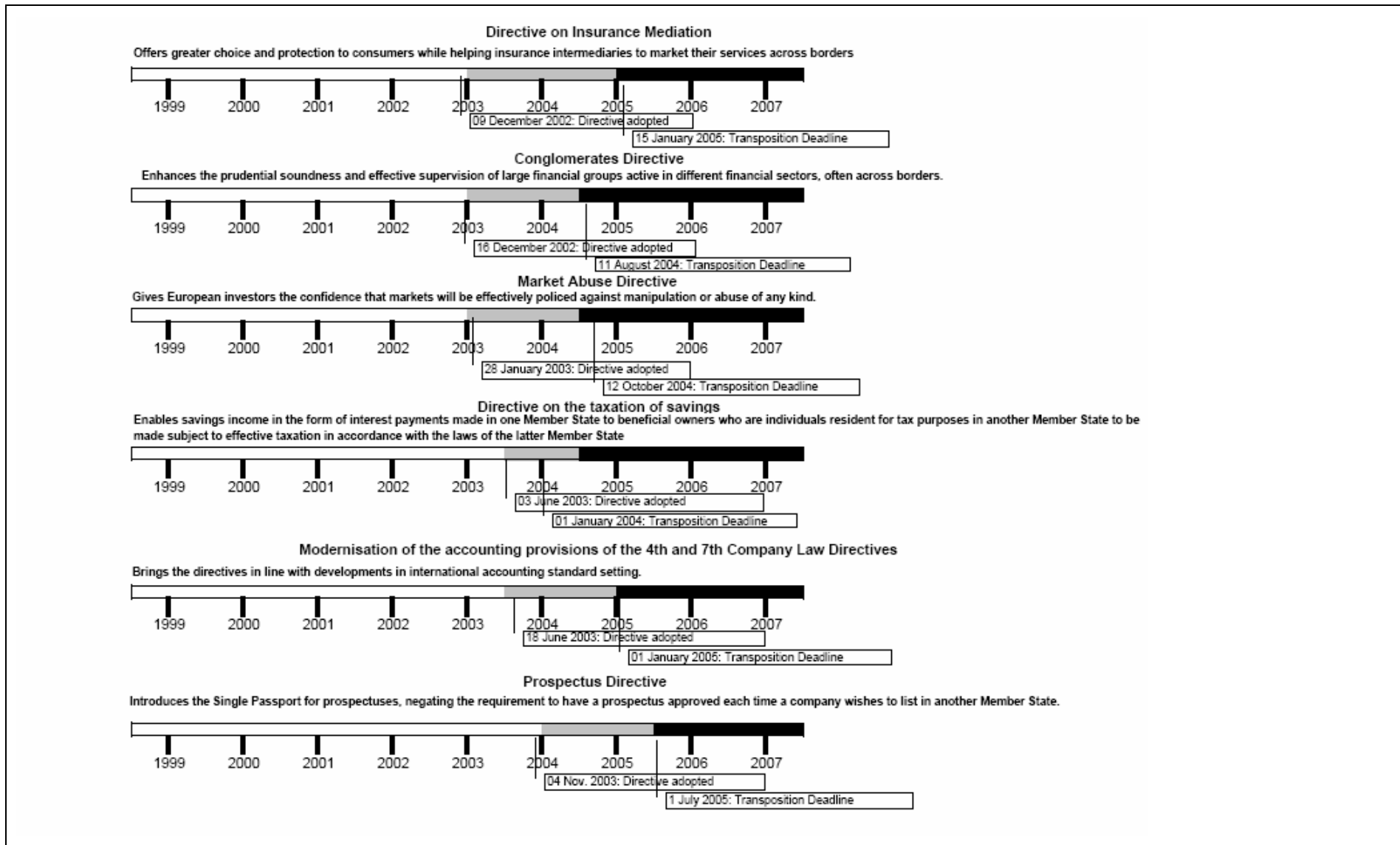
Redress systems could help to increase consumer confidence in the market so that the full benefits of integration can be realized. The out-of-court complaints network for financial services, FIN-NET, already provides some assistance for cross-border disputes.

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



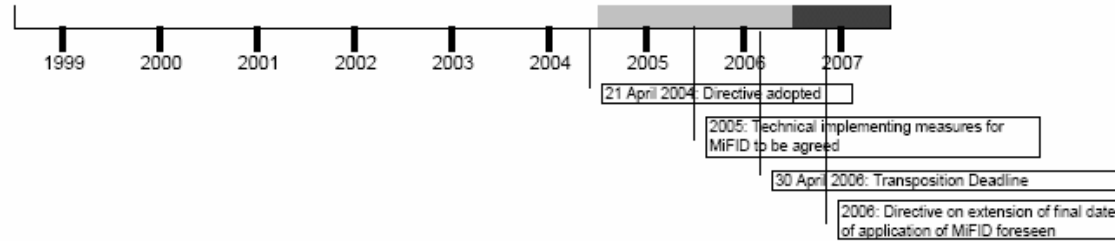






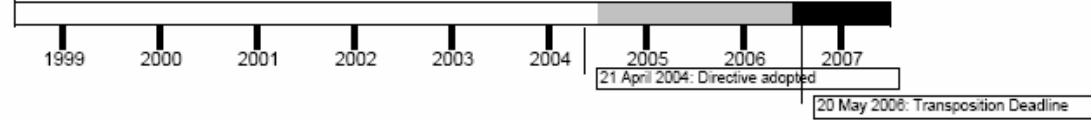
### Markets in Financial Instruments Directive

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



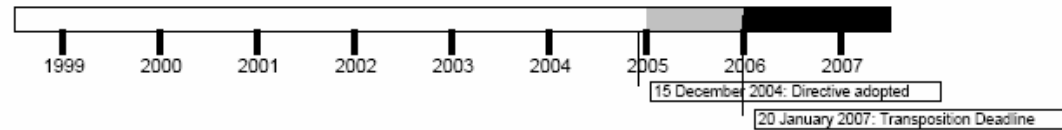
### Take-Over Bids Directive

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

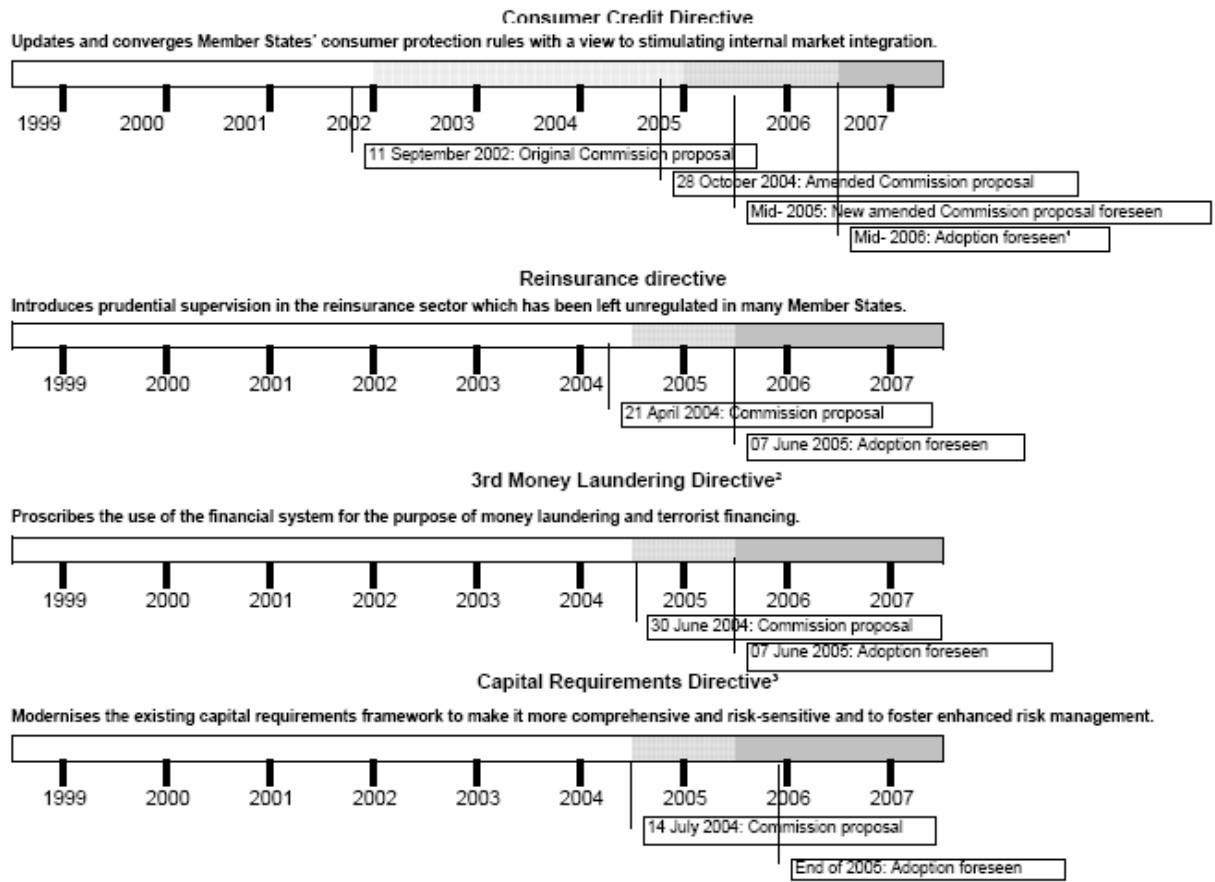


### Transparency Directive

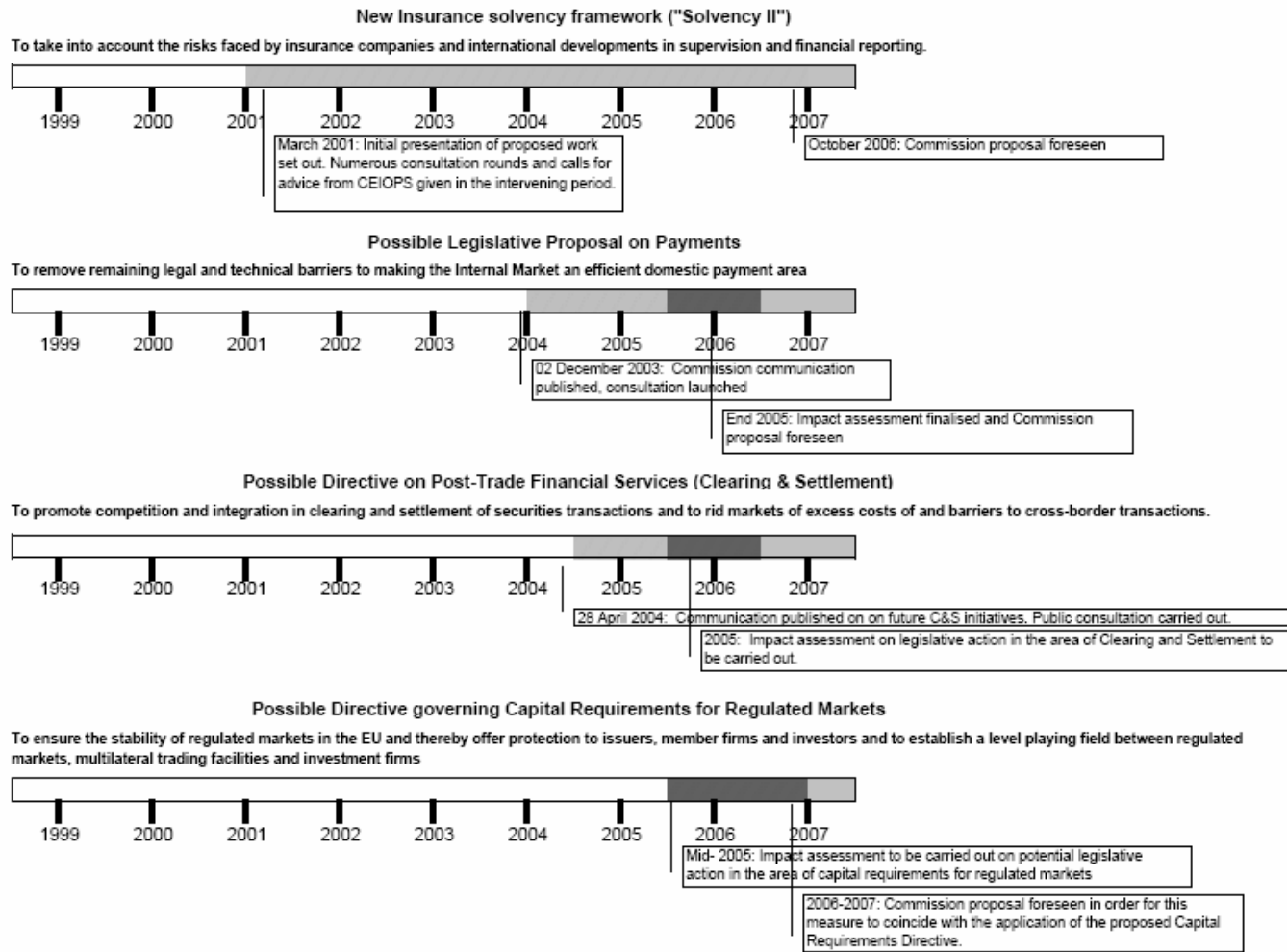
Raises the quality of information available to investors on companies' performance and financial position as well as on changes in major shareholdings.



(ii) Timeline for Completion of Ongoing Legislative Proposals



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



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