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**COMMISSION STAFF WORKING DOCUMENT**

**Single Market in Financial Services Progress Report  
2004-2005**

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## COMMISSION STAFF WORKING DOCUMENT

### Single Market in Financial Services Progress Report 2004-2005

#### 1. INTRODUCTION

Significant strides have been made over the last 18 months in terms of building European financial integration. By the 2005 deadline for the completion of the Financial Services Action Plan (FSAP), 98% of the measures had been completed<sup>1</sup>, and the emphasis in 2005 has been on beginning to assure proper implementation of the agreed measures. In addition, significant progress has been made in the areas of corporate governance and company law, combating financial crime, accounting and auditing. In all areas there has been a solid record of delivery, on time, in line with the political commitments the Council and European Parliament have made, and in terms of the Lisbon process.

2004-2005 has also seen considerable political activity. A new Commission took up office in late 2004 and was quick to confirm its commitment to the application of the "better regulation" agenda at all levels, only legislating at EU level when strictly necessary and only when *ex-ante* consultation and impact assessment have pointed to tangible benefits<sup>2</sup>. After two years of intensive consultation, the Commission adopted a White Paper outlining its strategy for financial services in the 2005-2010 timeframe, with the "better regulation" principles embedded in the policy programme<sup>3</sup>.

*New financial  
services policy  
2005-2010*

As 2005 draws to a close, Europe's financial integration is accelerating. European financial markets have performed strongly and all financial market segments are reporting growth – a good basis for the next phase of consolidation.

#### 2. DEVELOPMENTS IN FINANCIAL SERVICES SINCE MID-2004

##### 2.1. Institutional issues

The rejection of the proposed Constitutional Treaty in France and the Netherlands has implications for the Lamfalussy approach<sup>4</sup> in that it delays an institutional solution to the European Parliament's request to have equivalent control powers as its co-legislator. As a result, difficulties may be experienced in adopting the implementing measures which are necessary in order to ensure that the directives agreed upon by the

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<sup>1</sup> 41 of the 42 measures had been adopted, with the exception being the proposed 14<sup>th</sup> Company Law Directive on the Cross-Border Transfer of Registered Office, discussed in section 0 below.

<sup>2</sup> See for example the speech of Internal Market and Services Commissioner Charlie McCreevy to the European Policy Forum on "The Lisbon Strategy – Why Less is More" of 24 January 2005, available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=SPEECH/05/33&format=HTML&aged=1&language=EN&guiLanguage=en>

<sup>3</sup> COM(2005)629, see [http://europa.eu.int/comm/internal\\_market/finances/policy/index\\_en.htm](http://europa.eu.int/comm/internal_market/finances/policy/index_en.htm)

<sup>4</sup> Under the Lamfalussy approach, the European Parliament and Council adopt framework directives under the co-decision procedure and delegate the power to "fill in" the technical implementing measures to the Commission. The Commission adopts these, taking into account the advice of the appropriate advisory bodies at the supervisory level.

co-legislators deliver their economic benefits. However, there is broad consensus that the Lamfalussy approach has made EU decision making and regulatory and supervisory structures more efficient. EU technical rule making has gained a much greater degree of flexibility and can be much more responsive to market conditions. The challenge now is to ensure that this accomplishment is safeguarded and further developed to release its maximum potential over the next five years. Institutional stability is a prerequisite, and negotiations are underway.

*Inter-institutional balance may not be optimal given the delay in ratification of the EU Constitution*

The directive extending the Lamfalussy committee structure to the areas of banking, insurance and investment funds was adopted on 9 March 2005. The Committee of European Banking Supervisors (CEBS), the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) and the Committee of European Securities Regulators (CESR), are now established as important advisory committees to the Commission, and also fulfil an important role in pursuing co-operation and convergence between supervisors.

*Lamfalussy approach extended to three other areas. Process being monitored by IIMG.*

The Inter-institutional Monitoring Group (IIMG) was re-established to monitor the extended Lamfalussy committee structure in securities, banking, insurance and investment funds. The first meeting of the re-constituted group was held on 15 September 2005, at which working methods and procedures were agreed upon<sup>5</sup>. The group's first report is expected to be published in March 2006.

## **2.2. Transposition and Implementation**

Transposition, implementation and enforcement of financial services directives by Member States is now the core issue. As demonstrated in the Commission's Internal Market Scoreboard, and more specifically, the transposition tables for financial services directives, many Member States have built up considerable backlogs in their transposition of financial services directives.

*Only through consistent implementation will a true single market be achieved. Member State transposition is lagging*

In the period under review, the transposition deadlines for the following directives passed: the Financial Conglomerates Directive (11 August 2004), the Distance Marketing of Financial Services Directive (9 October 2004), the Market Abuse Directive (12 October 2004), the Insurance Mediation Directive (15 January 2005), the Prospectus Directive (1 July 2005) and the Pension Funds Directive (23 September 2005). The status of transposition of each directive in each Member State is updated every two weeks and can be tracked on the Commission's website<sup>6</sup>. In the field of securities, a further sectoral scoreboard has been created: the "Lamfalussy league table"<sup>7</sup>. These scoreboards have provided a real incentive to Member States to accelerate transposition. However, further improvement is needed. In a Union of 25, and soon 27, it is essential that Member States do not jeopardise the effective working of the Internal Market through delayed transposition and implementation of these key directives which facilitate pan-EU access for all EU companies and citizens.

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<sup>5</sup> See Press Release IP/05/1184 describing the first meeting of the re-established IIMG and the appointment of its Chairman.

<sup>6</sup> [http://europa.eu.int/comm/internal\\_market/finances/actionplan/index\\_en.htm#transposition](http://europa.eu.int/comm/internal_market/finances/actionplan/index_en.htm#transposition)

<sup>7</sup> [http://europa.eu.int/comm/internal\\_market/securities/transposition/index\\_en.htm](http://europa.eu.int/comm/internal_market/securities/transposition/index_en.htm)

### 2.3. Cross-border consolidation

The issue of cross-border consolidation in the financial sector has been the subject of considerable attention. At their informal meeting held in Scheveningen in September 2004, Economics and Finance Ministers asked the Commission to study possible obstacles to cross-border mergers and acquisitions in the financial sector. As part of the response to this call, a Communication on Intra-EU Investments in the Financial Services Sector was adopted on 21 October 2005<sup>8</sup>.

*Obstacles to cross-border consolidation in the financial sector identified*

In addition, a survey to identify and examine potential barriers to cross-border consolidation was carried out over the summer months, and the conclusions of this consultation were presented to ECOFIN ministers on 8 November 2005<sup>9</sup>. Potential barriers identified included an unfavourable climate for executing cross-border transactions, a lack of cross-border cost synergies, and negative perceptions on the part of consumers and employees towards non-domestic EU entities. The identification of these obstacles will assist in the planning of potential future actions in the area of financial services.

Furthermore, the Commission services, in co-operation with the European Banking Committee, have commenced work on amending Article 16 of the Banking Directive<sup>10</sup>, which covers the acquisition of shareholdings in another bank. The Commission has announced its intention to improve the current rules by introducing more transparency and clear procedures for such acquisitions<sup>11</sup>. In order to ensure cross-sectoral consistency, particular attention is also being paid to the equivalent provisions in insurance and securities legislation<sup>12</sup>.

*Legislation may be amended to eliminate one of the obstacles identified*

### 2.4. Prevention of corporate and financial malpractice

During the period under review, the issue of the combating of terrorist financing was the subject of considerable attention. The Commission launched a “Broad strategy to prevent financial and corporate malpractice”<sup>13</sup> in September 2004, *inter alia* with the aim of promoting more transparency in company accounts. In line with the Communication, a proposed directive amending the 4<sup>th</sup> and 7<sup>th</sup> Company Law Directives includes requirements for more transparency in the use of off-shore centres and Special Purpose Vehicles<sup>14</sup>. This proposal also takes account of the implications of the Parmalat scandal (see also section 2.13 below).

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<sup>8</sup> C/2005/4080, see:

[http://europa.eu.int/comm/internal\\_market/capital/framework/communications\\_en.htm](http://europa.eu.int/comm/internal_market/capital/framework/communications_en.htm)

<sup>9</sup> SEC(2005)1398

<sup>10</sup> Directive 2000/12/EC of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions

<sup>11</sup> See press release IP/05/1386, see:

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

<sup>12</sup> Article 15 of the Codified Life Insurance Directive and Third Non-Life Insurance Directive, articles 19-23 of the new Reinsurance Directive and article 10 of the Markets in Financial Instruments Directive (MiFID)

<sup>13</sup> COM(2004)611, see:

[http://europa.eu.int/comm/internal\\_market/company/financial-crime/index\\_en.htm#malpractice](http://europa.eu.int/comm/internal_market/company/financial-crime/index_en.htm#malpractice)

<sup>14</sup> COM(2004)725. This proposal was approved by the European Parliament on 15 December 2005.

## 2.5. Money Laundering

The Dutch and Luxembourg Presidencies and the European Parliament have worked hard in this period to secure the adoption of the third Anti-Money Laundering Directive, which extends the scope of the earlier directives and applies the anti-money laundering systems to the fight against terrorist financing. This directive was formally adopted by the European Parliament and Council on 26 October 2005. The UK Presidency, for its part, has given priority to acting on Special Recommendation VII from the FATF<sup>15</sup> concerning information on the originator of wire transfers of funds, in the context of the prevention of terrorist financing. The proposed regulation<sup>16</sup> addressing this issue is expected to be adopted as early as possible in 2006.

*Measures to combat money laundering and the financing of terrorism high priorities this year*

## 2.6. Investment services

### 2.6.1. Securities

The Markets in Financial Instruments Directive (MiFID)<sup>17</sup> (adopted in April 2004) is a key piece of legislation in the securities field. It enables investment firms, banks and exchanges to provide their services across borders on the basis of home country authorisation, gives investment firms the authorisation to process client orders outside of regulated exchanges, and governs the level of protection to be given to investors when employing an investment firm, regardless of its location within the EU. The original timetable for implementation of this directive was 30 April 2006. Already in autumn 2004, it had become evident that Member States and the industry would not be in a position to meet this timetable due to the complexity of the preparation of the implementing measures, which were scheduled for completion by the beginning of 2006. In June 2005, therefore, the Commission proposed to postpone the dates of transposition and effective application of the MiFID, by 6 months for transposition and an additional 6 months for effective application. The Council and European Parliament have agreed to extend this for a further 6 months (equally divided between 3 more months for transposition and 3 more months for application by the firms), in which case MiFID would have to be transposed by January 2007 and be effectively applied by November 2007. In parallel, work continues on finalising the MiFID implementing measures.

*Commission listens to market participants – MiFID application deadline extended*

### 2.6.2. Asset Management

Fresh attention over the last 18 months has focused on asset management. Investments in UCITS<sup>18</sup> account for over 70% of all assets in investment funds in Europe. UCITS have proved to be a reliable, understandable and popular retail investment product with increasing cross-border penetration. On 14 July 2005, the Commission published a Green Paper on asset management as a basis for consultation with stakeholders and national authorities<sup>19</sup>. The Green Paper examines whether UCITS legislation has effectively facilitated the integration of EU fund markets,

<sup>15</sup> Financial Action Task Force, an inter-governmental body that develops and promotes national and international policies to combat money laundering and terrorist financing.

<sup>16</sup> COM (2005)343

<sup>17</sup> Directive 2004/39/EC

<sup>18</sup> Undertakings for Collective Investment in Transferable Securities

<sup>19</sup> COM(2005)314, see [http://europa.eu.int/comm/internal\\_market/securities/ucits/index\\_en.htm](http://europa.eu.int/comm/internal_market/securities/ucits/index_en.htm)

whilst maintaining an appropriate level of investor protection. Although the UCITS passport is widely used, there are many difficulties surrounding its operation. In this respect, a number of steps are underway to promote consistent implementation and enforcement of existing UCITS provisions. These will consolidate the product passport and provide more guidance on investor protection. This includes work to clarify the eligible assets in which a fund can invest and to streamline notification procedures when marketing UCITS in other Member States.

*UCITS a huge success, but work needs to be done to improve their functioning*

The Green Paper on Asset Management also describes a number of important changes in European markets for investment funds. These include a broader universe of investment strategies and changing distribution systems. Here, the Green Paper asks whether disclosures and communications can help investors to contend with more complex investment environment. The Green Paper also identifies possible avenues to deliver a more efficient organisation of the investment fund landscape (fund mergers, pooling, management company passport).

The Green Paper is intended to serve as the starting-point for a process of exploring options for useful and cost-effective improvements to the existing framework.

## **2.7. Clearing and Settlement**

In its April 2004 Communication “Clearing and Settlement in the European Union - The way forward”<sup>20</sup>, the Commission suggested that a framework directive may be necessary in order to deliver efficient, cheap and safe cross-border clearing and settlement in Europe. Currently, cross-border clearing and settlement infrastructures are complex and fragmented, resulting in excessively high costs and risks, and reduced efficiency for market participants. Although the Commission has expressed in the Communication that it does not wish to impose any particular market structure or model, it has stated that barriers to integration of the clearing and settlement environment that are of a legal or regulatory nature may need to be removed at EU level.

*Action at EU level may be required in the area of clearing and settlement. Decision will be taken in 2006*

Over the last year, there has been extensive consultation and a thorough impact assessment has been carried out on the subject. Three expert groups were established to advise the Commission on its work, namely the Clearing and Settlement Advisory and Monitoring Expert (“CESAME”) group, the Fiscal Compliance (“FISCO”) group and the Legal Certainty group. In addition, the Commission services have been carrying out a regulatory impact assessment to analyse the economic case for legislative action on clearing and settlement. This impact assessment is still underway, and should be completed within the first quarter of 2006. A decision on the necessity for European legislation, or other intervention, is expected to be made on the basis of the results of this impact assessment and in the light of developments in the market.

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<sup>20</sup> COM(2004)0312, see: [http://europa.eu.int/comm/internal\\_market/financial-markets/clearing/index\\_en.htm#com](http://europa.eu.int/comm/internal_market/financial-markets/clearing/index_en.htm#com)

## 2.8. Banking and Financial Conglomerates

The Capital Requirements Directive<sup>21</sup> was proposed by the Commission on 14 July 2004. A compromise proposal was adopted by the European Parliament on 28 September 2005 and by the ECOFIN Council on 11 October, with formal adoption expected at the beginning of 2006. This directive aims to introduce a state-of-the-art supervisory framework in the European Union which reflects the Basel II rules on capital measurement and capital standards agreed at the G-10 level. By making sure that financial institutions' capital is more closely aligned with the risks they face, the new framework aims to enhance consumer protection, reinforce financial stability and promote the competitiveness of the European industry. The directive will allow banks to apply simpler methodologies from the start of 2007, and more sophisticated methodologies to be applied from the start of 2008. The Committee of European Banking Supervisors (CEBS) has set up a publicly accessible system to monitor the precise implementation of the Capital Requirements Directive in each Member State<sup>22</sup>, with a view to furthering supervisory convergence.

During 2005, the Commission services have been reviewing the Deposit Guarantee Schemes Directive<sup>23</sup>, following calls by some Member States for further clarification of rules – in particular with regard to how they should function in a pan-European environment. At the launch of the public consultation on this review<sup>24</sup>, the Commission stated that it will come forward with a Communication in 2006 which draws on the results of this public consultation, a quantitative impact assessment as well as technical advice delivered by CEBS.

## 2.9. Insurance

### 2.9.1. Reinsurance

The Reinsurance Directive was approved by the European Parliament in June 2005 and adopted by the Council on 17 October 2005. This directive fills a gap in existing EU legislation, which did not regulate specialised reinsurers, and aims to contribute to a more efficient and secure cross-border market in reinsurance. Key elements of the directive include the establishment of supervision of reinsurers by a “home” supervisor, on the basis of which they can operate throughout the EU, and the abolition of collateral requirements.

*The gap in EU legislation concerning specialised reinsurers is filled*

### 2.9.2. Motor Insurance

The 5th Motor Insurance Directive<sup>25</sup> was adopted by the European Parliament and the Council on 11 May 2005. The directive improves significantly the existing provisions of the motor insurance directives, including considerable upgrades to the protection of victims by increasing the minimum insurance amounts for personal injuries and for damage to property. Under the directive, pedestrians and cyclists are now designated

*New motor insurance directive gives greater clarity and provides for increased protection*

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<sup>21</sup> COM(2004)486, see: [http://europa.eu.int/comm/internal\\_market/bank/regcapital/index\\_en.htm](http://europa.eu.int/comm/internal_market/bank/regcapital/index_en.htm)

<sup>22</sup> Demo version available at <http://www.c-eps.org/sd/SDTF.htm>

<sup>23</sup> Directive 94/19/EC

<sup>24</sup> See [http://europa.eu.int/comm/internal\\_market/bank/guarantee/index\\_en.htm](http://europa.eu.int/comm/internal_market/bank/guarantee/index_en.htm)

<sup>25</sup> Directive 2005/14/EC, see: [http://europa.eu.int/comm/internal\\_market/insurance/motor\\_en.htm#directives](http://europa.eu.int/comm/internal_market/insurance/motor_en.htm#directives)

as specific categories of victims who are also entitled to compensation. The directive is due to be transposed by 11 June 2007 with the exception of the provisions on the new minimum insurance amounts for which the Member States can request a transitional period up to 5 years from the implementation deadline.

### 2.9.3. Insurance Solvency II

During 2005, the Insurance Solvency II project entered into a crucial phase. The Commission services have given three waves of calls for technical advice to CEIOPS, the level-3 committee. The answers by CEIOPS will form the basis for the technical aspects of the Solvency II project, which aims to bring about major changes in the supervision and regulation of insurance in the EU as it will introduce a risk-based supervisory system. Moreover, as part of the Insurance Solvency II project, the Services have, at the request of the level-2 committee EIOPC (the European Insurance and Pension Committee), decided to consolidate the existing insurance directives (excluding motor insurance) into one single text; 16 legal texts will disappear. A first working document was presented to EIOPC on 2 December 2005. Detailed discussions took place in the Insurance Solvency II working group on 14 December 2005. As mentioned in the White Paper on Financial Services Policy (2005-2010), the adoption of the Commission proposal is foreseen for mid-2007.

*Solvency II will make major contribution to EU's simplification programme – 16 existing legal texts will disappear.*

### 2.9.4. Insurance guarantee schemes

A Commission services working group to examine the possible introduction of an insurance guarantee scheme is currently assessing whether the Commission should consider coming forward with a proposal on this matter. The decision as to any potential proposal is expected to be made after the Group's final meeting in December 2005.

*Possibility of introduction of insurance guarantee schemes being assessed*

## 2.10. Retail Financial Services

The Commission's Financial Integration Monitor<sup>26</sup> is a policy guidance tool that helps to identify key areas that may need further consideration by policy makers by mapping out the state of integration in financial sectors in the EU. In its 2005 edition, the area of retail financial services was highlighted as one where integration is lagging behind. Following on from this, the Commission's White Paper on the future strategy for financial services policy includes a reference to retail financial services as being one of the few areas where new legislative initiatives could be needed to dynamise the market. In certain areas, such as mortgage credit and consumer credit, work is already underway (see sections 2.10.1 and 2.10.2 below). In other areas identified in the White Paper, basic, bottom-up consultative work is expected to begin soon.

*Retail financial markets still fragmented*

### 2.10.1. Mortgage Credit

Under the umbrella of "retail financial services", significant work has already been done in the area of mortgage credit. A four-step process has been followed to assess whether there is a business case for further integration of the mortgage market. In

*Integration of the market for mortgages a key element in bringing the single market closer to the consumer*

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<sup>26</sup> SEC(2004)987, see [http://europa.eu.int/comm/internal\\_market/finances/fim/index\\_en.htm](http://europa.eu.int/comm/internal_market/finances/fim/index_en.htm)

December 2004, the report of the Forum Group on Mortgage Credit, which comprised a wide variety of relevant stakeholders including representatives of lenders, notaries, surveyors, insurers and consumer representatives, was published. It proposed 48 recommendations for legislative and non-legislative measures to boost the integration of the EU home loans market.

Subsequently, the Commission services published a study on the costs and benefits of further integration in this area, carried out by economic consultancy London Economics<sup>27</sup>, which suggests strong political and economic gains. In July, the Commission published its Green Paper on mortgages with a provisional response to both reports, and this Green Paper was opened up to consultation. Based on the feedback received in this consultation exercise, it is expected that a White Paper will be prepared by the summer of 2006, subject to rigorous *ex-ante* evaluation and impact assessment.

### 2.10.2. Consumer Credit

On 7 October 2005, the Commission adopted its revised proposal for a Directive on Consumer Credit, following the initial amended proposal which had been brought forward a year earlier. The objective of this directive is to ensure fair competition in a genuine single market for consumer credit, with the aim of securing cheaper, more accessible consumer credit and broadening the range of products on offer while at the same time maintaining a high level of consumer protection. This new text is a consolidated version, based on the first modified proposal of October 2004, but including a number of significant changes further to consultations held in 2005 with the concerned stakeholders. The issue of equity release has been removed from the directive. The Commission's intention is to deal with this issue in a coherent matter in the follow up to the Green paper on Mortgage Credit. In line with "better regulation" principles, other changes should give Member States more flexibility to adapt the rules to their national situation in certain areas, while introducing mutual recognition in a limited number of cases to protect the single market. The proposal is now on the table with the European Parliament and Council.

*Greater harmonisation of consumer credit rules could increase consumer protection and confidence*

## 2.11. Payments

### 2.11.1. New Legal Framework for Payments

The issue of payments is another key area of focus, as the creation of the Single European Payments Area is a high priority for the Commission. A Commission Communication<sup>28</sup> setting out the legislative and non-legislative steps that were deemed necessary for the creation of this single payments area was initially proposed in December 2003, and was subject to widespread consultation with market participants and Member States. Although much of the technical work necessary to create the single payments area rests on the shoulders of those involved in the payments industry, certain legislative steps are also needed.

*New Legal Framework for Payments aims to help in the creation of a Single European Payments Area*

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<sup>27</sup> Both reports are available at:

[http://europa.eu.int/comm/internal\\_market/finservices-retail/home-loans/index\\_en.htm#mortgag](http://europa.eu.int/comm/internal_market/finservices-retail/home-loans/index_en.htm#mortgag)

<sup>28</sup> COM(2003)718, [http://europa.eu.int/comm/internal\\_market/payments/framework/index\\_en.htm](http://europa.eu.int/comm/internal_market/payments/framework/index_en.htm)

The Commission came forward with its proposal for a Directive on a New Legal Framework for Payments on 1 December 2005<sup>29</sup>. This proposed directive aims to eliminate legal obstacles to the creation of a single payments area through the opening up of market access for payment service providers, the abolition of conflicting national and EU rules on information requirements and the harmonisation of core rights and obligations for users and providers, so that Europe's consumers can execute intra-EU payments for a fixed, low price, irrespective of the location of the sender and the beneficiary.

### 2.11.2. *E-money Directive*

The Commission services are currently carrying out a fundamental review and evaluation of the E-Money Directive<sup>30</sup>, in light of market developments since its introduction. For instance, pre-paid telephone cards are considered as e-money by some Member States and need to be authorised under the directive, whereas in others they are not. At the end of the consultation, which is scheduled for the beginning of 2006, the Commission may decide on the next steps. Currently, all hypotheses are open, from amending the directive to withdrawing it and regulating such activities under the New Legal Framework for Payments.

## 2.12. Corporate Governance and Company Law

### 2.12.1. *Introduction of IAS/IFRS*

A major milestone was reached in January 2005, when the obligation for listed companies to prepare their accounts in accordance with International Accounting Standards (IAS/IFRS) came into effect. Although the IAS Regulation had been adopted unanimously in 2002, controversy followed on the issues of fair value and hedge accounting<sup>31</sup>. Temporary carve-outs to IAS 39 were agreed in order to allow more time for the standard setter, the IASB<sup>32</sup>, to find an appropriate response to the significant problems highlighted by the industry. In the meantime, an acceptable solution has been found to the fair value issue and the Commission adopted a Regulation endorsing IAS 39 Fair Value Option on 15 November 2005<sup>33</sup>. Work is continuing on the second carve-out relating to hedge accounting.

Despite some scepticism, the transition to IAS/IFRS has, in general, passed off smoothly. What is critical now is to ensure that application of the accounting standards is consistent across the EU, with effective, joined-up EU enforcement mechanisms. Only then will companies operating on a pan-EU basis be able to truly benefit from the single set of accounting standards.

In addition, the Commission is spearheading with the US Securities and Exchange Commission (SEC), the move towards allowing EU companies compliant with

*Introduction of IFRS passed off smoothly. Consistent application the new priority*

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<sup>29</sup> COM(2005)603, *idem*

<sup>30</sup> Directive 2000/46/EC

<sup>31</sup> With regard to these features of the standard, it was urgently needed that financial statements disclosed market reality instead of hiding this valuable insight under a blanket of off-balance sheet and historic cost accounting.

<sup>32</sup> The International Accounting Standards Board

<sup>33</sup> Regulation 1864/2005

IAS/IFRS access to the US capital markets without the need to comply with costly, duplicative and confusing reconciliation requirements. The SEC has published a road map towards IAS/ US GAAP convergence (see section 2.14).

### 2.12.2. Transparency Directive

The Transparency Directive<sup>34</sup> was adopted on 15 December 2004. The objective of this directive is to raise the quality of information available to investors on companies' performance and financial position and on changes to major shareholdings. It was a "Lamfalussy" framework directive, and work on the Level-2 implementing measures is still underway, in cooperation with CESR.

### 2.12.3. Corporate Governance Action Plan

The Commission's Communication modernising Company Law and enhancing Corporate Governance in the EU ("Corporate Governance Action Plan")<sup>35</sup> was published in May 2003 as a response to Recommendations made in November 2002 by the High-Level Group of Company Law Experts<sup>36</sup>. The Action Plan's main objectives were strengthening shareholders' rights, reinforcing protection for employees and creditors and increasing the efficiency and competitiveness of business, with special attention to some specific cross-border issues. In order to achieve these objectives, a comprehensive set of legislative and non-legislative measures was proposed, prioritised over the short-term (2003-2005), medium-term (2006-2008) and long-term (2009 onwards).

The following actions were set out as priorities for the period 2003-2005, and virtually all of them have been addressed<sup>37</sup>.

- Shareholders' rights: Two consultation exercises were carried out in autumn 2004 and summer 2005 on fostering an appropriate regime for shareholders' rights, with particular emphasis on the exercise of voting rights in cross-border situations. The Commission adopted a proposal for a directive on this subject<sup>38</sup> on 05 January 2006.
- A Recommendation on Independent Directors was issued on 15 February 2005<sup>39</sup>, urging Member States to reinforce the presence and role of independent non-executive directors on listed companies' boards.
- A Recommendation on Directors' Pay was issued on 14 December 2004, setting out guidance on disclosure and shareholder control on the remuneration policies of listed companies.

*Upholding shareholders' rights and clarifying board responsibilities will contribute to an improvement in corporate behaviour, with the aim of avoiding scandals such as those seen in the past*

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<sup>34</sup> Directive 2004/109/EC

<sup>35</sup> COM(2003)284, see:

[http://europa.eu.int/comm/internal\\_market/company/modern/index\\_en.htm#communication](http://europa.eu.int/comm/internal_market/company/modern/index_en.htm#communication)

<sup>36</sup> See [http://europa.eu.int/comm/internal\\_market/company/modern/index\\_en.htm#background](http://europa.eu.int/comm/internal_market/company/modern/index_en.htm#background) for the full text of the High Level Group's final report.

<sup>37</sup> Further information on each of these initiatives is available at:

[http://europa.eu.int/comm/internal\\_market/company/index\\_en.htm](http://europa.eu.int/comm/internal_market/company/index_en.htm)

<sup>38</sup> COM(2005)685

<sup>39</sup> 2005/162/EC

- A European Corporate Governance Forum was established in October 2004<sup>40</sup> to examine best practices in Member States with a view to enhancing the convergence of national corporate governance codes. In 2005, three meetings have taken place.
- The Commission also established an Advisory Group on Company Law and Corporate Governance<sup>41</sup> to provide detailed technical advice on preparing corporate governance and company law measures. Its first meeting was held in June 2005, followed by two further meetings in the course of the year.
- The Proposal for a Directive simplifying and modernising the 2<sup>nd</sup> Directive on capital maintenance and alteration<sup>42</sup> of 29 October 2004 was discussed under the Luxembourg and UK Presidencies. The Economic and Social Committee delivered its opinion in July. The Council agreed on a general approach at its meeting of 29 November 2005 and the European Parliament is expected to deliver its opinion in first reading in February 2006.
- The 10<sup>th</sup> Company Law Directive on Cross-Border Mergers<sup>43</sup>, which aims to facilitate cross-border mergers between companies governed by the laws of different Member States of the European Union, was adopted by the Council on 19 September 2005. It should be transposed in the Member States within two years after its entry into force.
- European Private Company: A feasibility study is in its final stages. The results of this study will be carefully evaluated before deciding on possible future steps.

*New EU company structures should allow for the most effective pan-EU organisation of EU companies*

On 20 December 2005, the Commission services launched a wide-ranging consultation on the medium term of the Action Plan<sup>44</sup>. The consultation takes into account new developments since the adoption of the Action Plan and the fact that the EU's further action in this area needs to be firmly placed in the context of the competitiveness agenda. The consultation covers the actions envisaged in the 2003 Action Plan, including a possible proposal aimed at facilitating the cross-border transfer within the Community of the registered office of a company formed in accordance with the legislation of a Member State (14<sup>th</sup> Company Law Directive). The consultation also includes the idea of a consolidation of existing EU company law, in line with the Commission's more general efforts on simplification of EU law.

*Consultation launched on future of Corporate Governance Action Plan*

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<sup>40</sup> See IP/04/1241

<sup>41</sup> See Commission Decision 2005/380/EC

<sup>42</sup> COM(2004)730

<sup>43</sup> Directive 2005/56/EC

<sup>44</sup> See [http://europa.eu.int/comm/internal\\_market/company/consultation/index\\_en.htm](http://europa.eu.int/comm/internal_market/company/consultation/index_en.htm)

### 2.13. Accounting & Auditing

Amendments to the 4<sup>th</sup> and 7<sup>th</sup> Company Law Directives with a view to ensuring collective board responsibility and more disclosure on transactions, off-balance sheet vehicles and corporate governance were proposed by the Commission on 28 October 2004<sup>45</sup>. On 7 June 2005, the Council reached a political agreement and the proposal was approved by the European Parliament on 15 December 2005.

*Greater financial disclosure and better auditing should increase investor confidence*

On 11 October 2005, both the European Parliament and Council approved this 8<sup>th</sup> Company Law Directive<sup>46</sup> in a single reading. Following the Parmalat scandal, this directive had been given high political priority. Its objectives are to set out Community-wide rules for the statutory audit function. It clarifies the duties of statutory auditors, their independence and their ethics, introduces the requirement for the application of international standards on auditing and sets the criteria for robust public oversight over the audit profession.

### 2.14. External relations

The informal EU-US Financial Markets Regulatory Dialogue (“FMRD”) has continued as the framework arrangement for discussing EU-US financial market relations and issues of mutual interest, and it is intended that this will continue. This dialogue has developed well – with both sides building confidence by real and reciprocal efforts to reduce transatlantic regulatory friction and overspill. This work seems to be of growing importance. EU-US financial markets now cover approximately 70-80% of the world’s capital markets and many new initiatives and regulatory and supervisory issues are discussed in this forum.

*Regulatory dialogue with the US continues to bear fruit for EU companies and investors*

In April 2005, the SEC drew up a “roadmap” setting out the steps needed to eliminate the US GAAP reconciliation requirement for foreign private issuers that use IAS/IFRS. The roadmap establishes a goal of eliminating the requirement as early as possible, potentially by 2007, but at the very latest by 2009. In parallel, both the European Commission services and the SEC are closely involved in the convergence programme being undertaken jointly by the IASB and the US Financial Accounting Standards Board (FASB), in order to ensure that the convergence programme has a clear timetable, clear objectives and is transparent to all stakeholders.

In the area of banking, the EU has adopted and the US is now in the process of adopting the new Basel II framework; a good example of the interdependence between the EU and US political processes. Legislators and regulators on both sides closely monitor what is going on on the other side of the Atlantic, and in order to keep the legislative process on track, both parties are cooperating closely in order to ensure that progress is made in parallel in the EU and the US. Whereas the EU will be implementing these rules in the 2007-2008 timeframe, the US has stated that they will not apply them until 2009. A high-level meeting has been announced for mid-2006 to resolve any practical issues for EU and US institutions that might result from the implementation delay in the US.

*Basel II should ideally be applied in parallel on both sides of the Atlantic*

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<sup>45</sup> COM(2004)725, see [http://europa.eu.int/comm/internal\\_market/company/board/index\\_en.htm](http://europa.eu.int/comm/internal_market/company/board/index_en.htm)

<sup>46</sup> COM(2004)177

In insurance, the adoption of the new Reinsurance Directive provides a real opportunity to solve the long-standing issue of US collateral requirements for foreign reinsurers which are expensive, disturb the level playing field and thus prevent market access, without having any real added value in terms of financial stability. The Commission services and the US National Association of Insurance Commissioners have started work on a roadmap towards the abolition of reinsurance collateral, which could take place in parallel to the implementation of the EU Reinsurance Directive in EU Member States by 2009.

*Greater coherence on collateral requirements is needed*

The issue of deregistration of listed securities in the US capital markets, as determined by SEC rules, is another area where considerable progress has been made. Whilst delisting of an EU issuer's securities from an US stock exchange is relatively easy, deregistration of those securities is almost impossible under current SEC rules. Further to extensive discussions in the EU-US Financial Markets Regulatory Dialogue, the SEC made its proposal for a rule change on this issue on 14 December 2005. The Commission services are currently examining this proposal.

*SEC has made proposal on deregistration*

Another matter of urgency, and one which is closely linked to the above-mentioned negotiations with the US, but also affects other third-country partners, is the issue of "equivalence" of third country accounting standards as used in the accounts of non-EU companies listed on exchanges or otherwise raising capital from the public within the EU. The wording of the Transparency Directive<sup>47</sup> stipulates that by January 2007, issuers' financial information must be presented in IAS/IFRS or, in the case of third country issuers, using an "equivalent" accounting standard. From the same time, the Prospectus Directive<sup>48</sup> will require financial information included in a prospectus to be restated if it was not originally presented using such a standard. The Commission services are currently examining how to best address this issue on the basis of the technical opinion provided by CESR in June 2005.

*EU examining how best to address the issue of "equivalence"*

A further "external" issue of relevance is the contribution by EU Member States to a variety of international bodies. These include international standard setters such as the IASB, the IAASB<sup>49</sup> and the Basel Committee on Banking Supervision, industry supervisory bodies such as the IAIS<sup>50</sup>, IOSCO<sup>51</sup> and PIOB<sup>52</sup> and policy advice bodies, for example the Financial Action Task Force. Although many Member States take part, the decisions made and recommendations issued by these bodies have an impact on the EU as a whole. It could therefore be useful for the EU to improve its representative position and speak more with one voice in these fora in future.

*EU could usefully improve its representation on international bodies*

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<sup>47</sup> Directive 2004/109/EC

<sup>48</sup> Directive 2003/71/EC

<sup>49</sup> International Auditing and Assurance Standards Board

<sup>50</sup> International Association of Insurance Supervisors

<sup>51</sup> International Organization of Securities Commissions, the association of securities regulators

<sup>52</sup> Public Interest Oversight Board, the body established to oversee the public interest activities of the International Federation of Accountants

### 3. FUTURE PRIORITIES – WHITE PAPER 2005-2010

The Commission's White Paper on Financial Services (2005-2010) sets out the overall objectives in financial services policy for the next five years. The emphasis is very much on dynamic consolidation of the existing framework, improving implementation and enforcement of legislation currently in effect and advancing supervisory co-operation. This is considered essential to ensure that the efforts of recent years, particularly with the legislative completion of the Financial Services Action Plan, are not lost. Now that the necessary legal framework is in place, Member States must ensure that it is implemented appropriately.

*“Dynamic consolidation”  
the key theme  
for the coming  
years*

The Commission has reiterated its commitment to the “better regulation” principles by being transparent, consulting widely and carrying out thorough *ex-ante* impact assessments and *ex-post* evaluations of new and existing legislation, while clarifying, simplifying and consolidating rules where possible. The co-operation between supervisors introduced under the Lamfalussy approach must be made to work to its full potential and produce convergence of practices, so that incoherent or even conflicting application of EU legislation in the Member States is a thing of the past.

The White Paper indicates the work that will need to be done to ensure that supervisory arrangements are able to meet new challenges associated with increasing European integration.

*Limited new  
initiatives, such  
as in asset  
management  
and retail  
financial  
services*

The White Paper also outlines those limited areas where new initiatives are to be undertaken, namely investment funds (see section 2.6.2, above) and retail financial services, where future action is expected in the areas of bank accounts and credit intermediaries.

### Transposition of FSAP Directives - State of play as at 15/12/2005

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OK = notification received and checked by the Commission or no notification required = ok

NA = not applicable = ok

D = derogation = ok

Action	Measure taken	Transposition deadline	Country																									
			Austria	Belgium	Cyprus	Czech Republic	Germany	Denmark	Estonia	Greece	Spain	Finland	France	Hungary	Ireland	Italy	Lithuania	Luxembourg	Latvia	Malta	Netherlands	Poland	Portugal	Sweden	Slovenia	Slovakia	United Kingdom	
Directive on the taking up, pursuit and prudential supervision of the businesses of electronic money institutions.	Directive 2000/46/EC	27/04/2002	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK
Directive amending the insurance directives and the ISD to permit information exchange with third countries	Directive 2000/64/EC	17/11/02	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK
Directive on the reorganisation and winding-up of Insurance undertakings	Directive 2001/17/EC	20/04/03	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	NC	OK	OK	OK	
Directive amending the money laundering directive	Directive 2001/97/EC	15/06/03	OK	OK	OK	OK	OK	OK	OK	NC	OK	OK	CP	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	
Two directives on UCITS	Directive 2001/107/EC, Directive 2001/108/EC	13/08/03 13/08/03	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	
Directives amending the solvency margin requirements in the insurance directives	Directives 2002/12/EC repealed by 2002/83/EC Directive 2002/13/EC	20/09/03 20/09/03	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	
Directive on financial collateral arrangements	Directive 2002/47/EC	17/12/03	OK	OK	OK	EX	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	NC	OK	OK	OK	OK	OK	OK	
Directive amending the 4th and 7th Company Law Directives to allow fair value accounting	Directive 2001/65/EC	1/01/04	OK	OK	EX	OK	OK	OK	EX	NC	OK	OK	OK	OK	OK	EX	NC	OK	EX	EX	OK	OK	OK	EX	EX	OK	OK	
Directive on the taxation of savings income in the form of interest payments	Directive 2003/48/EC	1/01/04	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	
Directive on the reorganisation and winding-up of banks	Directive 2001/24/EC	5/05/04	OK	OK	OK	NC	OK	OK	OK	NC	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	NC	NC	OK	OK	OK	OK	
Directive on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate.	Directive 2002/87/EC	11/08/04	OK	OK	OK	OK	OK	EX	OK	NC	OK	OK	EX	OK	OK	EX	NC	OK	OK	NC	OK	NC	NC	EX	OK	OK		
Directive on the Distance marketing of Financial Services	Directive 2002/65/EC	9/10/04	OK	NC	OK	CP	OK	OK	OK	NC	OK	NC	CP	OK	NC	OK	NC	OK	OK	NC	OK	NC	OK	OK	OK	OK		
Directive on insider dealing and market manipulation	Directive 2003/6/EC	12/10/04	OK	CP	EX	CP	OK	EX	OK	EX	OK	EX	OK	EX	OK	EX	NC	OK	OK	EX	EX	NC	EX	OK	OK	EX		

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			Austria	Belgium	Cyprus	Czech Republic	Germany	Denmark	Estonia	Greece	Spain	Finland	France	Hungary	Ireland	Italy	Lithuania	Luxembourg	Latvia	Malta	Netherlands	Poland	Portugal	Sweden	Slovenia	Slovakia	United Kingdom	
Directive modernising the accounting provisions of the 4th and 7th Company Law Directives	Directive 2003/51/EC	1/01/05	OK	EX	CP	EX	OK	OK	OK	NC	CP	OK	OK	OK	OK	NC	EX	NC	OK	EX	EX	OK	OK	EX	OK	EX	CP	
Directive on insurance mediation	Directive 2002/92/EC	15/01/05	OK	NC	OK	OK	NC	OK	OK	NC	NC	OK	NC	OK	OK	OK	CP	OK	CP	NC	OK	NC	OK	OK	OK	OK	OK	
Directive on prospectuses	Directive 2003/71/EC	1/07/05	EX	CP	EX	NC	EX	EX	EX	EX	EX	EX	EX	EX	NC	EX	EX	EX	EX	EX	EX	NC	NC	EX	EX	EX	EX	
Directive on the prudential supervision of pension funds	Directive 2003/41/EC	23/09/05	OK	NC	NC	NC	OK	OK	OK	OK	CP	NC	NC	OK	OK	NC	NC	OK	OK	CP	NC	OK	NC	NC	CP	CP	CP	
Directive on Markets in Financial Instruments (update of ISD)	Directive 2004/39/EC, Communication COM(2000)729	30/04/06	NC	NC	CP	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	
Directive on Take Over Bids	Directive 2004/25/EC	20/05/06	NC	NC	NC	NC	NC	CP	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	CP	NC	
Transparency directive	Directive 2004/109/EC	20/01/07	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	