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*Committee on Economic and Monetary Affairs*

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## **DRAFT REPORT**

on current state of integration of EU financial markets  
(2004/XXXX(INI))

Committee on Economic and Monetary Affairs

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on current state of integration of EU financial markets (2004/XXXX(INI))

*The European Parliament,*

- [text on current state of integration of EU financial markets],
- having regard to the implementation of the Financial Services Action Plan (FSAP) adopted by the Commission, in particular the European Parliament and Council Directive 2003/71/EC of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading<sup>1</sup>, the European Parliament and Council Directive 2003/6/EC of 28 January 2003 on insider dealing and market manipulation (market abuse)<sup>2</sup>, the European Parliament and Council Directive 2004/39/EC of 21 April 2004 on markets in financial instruments<sup>3</sup> and the European Parliament and Council Directive 2004/109/EC of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market<sup>4</sup>,
- having regard to the European Parliament and Council Directives 2001/107/EC<sup>5</sup> and 2001/108/EC<sup>6</sup> of 21 January 2002 amending Council Directive 85/611/EEC on undertakings for collective investment in transferable securities (UCITS),
- having regard to the Inter-Institutional Monitoring Group's third Report monitoring the Lamfalussy Process,
- having regard to the four reports by four independent groups of experts on the state of financial integration in the banking, insurance, securities and asset management sectors published by the Commission in May 2004 and the financial markets participants' comments on these reports,
- having regard to its resolution of 21 November 2002 on prudential supervision rules in the European Union<sup>7</sup>,
- having regard to its resolution of 15 January 2004 on the future of hedge funds and derivatives<sup>8</sup>,
- having regard to its resolution of 10 February 2004 on the role and methods of rating agencies<sup>9</sup>,
- having regard to the Committee of European Securities Regulators (CESR) report on

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<sup>1</sup> OJ L 345, 31.12.2003, p 64.

<sup>2</sup> OJ L 96, 12.4.2003, p. 16.

<sup>3</sup> OJ L 145, 30.4.2004, p 1.

<sup>4</sup> OJ L 390, 31.12.04, p. 38.

<sup>5</sup> OJ L 41, 13.2.2002, p. 20.

<sup>6</sup> OJ L 41, 13.2.2002, p.35.

<sup>7</sup> OJ C 25 E, 29.1.2004, p. 394.

<sup>8</sup> OJ C 92 E, 16.4.2004, p. 407.

<sup>9</sup> Texts adopted, P5\_TA(2004)0080.

"which supervisory tools for the EU securities markets", known as the "Himalaya" report,

- having regard to Rule 45 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A6-..../2005),
- A. whereas, on 11 May 1999, the Commission adopted the Financial Services Action Plan (FSAP) aiming to increase investment, growth, and competitiveness, to improve security and stability and to provide transparency and protection for all parties involved,
- B. whereas cross-border sales, particularly of retail financial products, are still fragmented and hindered by barriers and cultural differences,
- C. whereas scope for further legislative action at EU level should be clearly identified and debated, and the impact of such action should be assessed,
- D. whereas a fair regulatory and supervisory environment provides the framework in which companies can operate efficiently and effectively and should be applied consistently irrespective of the Member State in which business is being conducted,
- E. whereas the Lamfalussy process aims to lay a practicable road to harmonisation and convergence, and should be carefully assessed, notably on its political and democratic accountability,

#### ***A. General perspectives***

1. Notes that the FSAP is considered a success, notably as regards its legislative proposals, with 39 out of 42 measures already adopted; notes, however, that it is too early to pass a definitive judgement, given that many implementing measures have not yet been adopted; suggests that the Commission conduct a full and public evaluation of the current FSAP;
2. Emphasises that efficient transposition and enforcement, as well as increased convergence of national supervisory practices, will be the key to the FSAP's success; urges the European Institutions to ensure that the Lamfalussy process works effectively at each level, notably that level 3 Committees perform their roles and that, by means of level-4 enforcement procedures, accurate and timely transposition of EU rules into national legislation is secured;
3. Recommends that greater political attention be given to the implementation and application of existing legislation; intends to organise on a systematic basis dialogues at the level of its competent committee with all relevant actors, so as to ensure democratic scrutiny of the implementation process;
4. Recalls its precondition of a right to call-back on implementing measures at level 2 in the Treaty for the European Parliament's support of the Lamfalussy process and its extension to the banking, insurance, pension funds and UCITS sectors and the sunset clauses in the various directives;

5. Believes that consultation of all interested parties is very important for the development of appropriate legislation and calls on the Commission to extend this to include a formal dialogue with representatives of associations of both financial providers and consumers, including small shareholders associations, the social partners and SMEs; is attached to the valuable expertise and input of the European Central Bank and national central banks into the Lamfalussy process;
6. Regrets the lack of input from consumers and users with regard to financial services legislation; asks the Commission and the Member States to promote and support consumer awareness programmes and education initiatives and the creation of specialised consumer initiatives in the financial sector;

### ***B. Supervisory and regulatory system***

7. Notes that the convergence of the supervisory practices of Member State authorities is key for efficient cross-border operations; considers that cooperation and mutual trust between supervisory authorities is crucial, and urges those authorities to strengthen their mutual relations;
8. Welcomes the so-called "Himalaya" report brought forward for consultation by the CESR, and agrees with its core recommendations on convergence of supervisory powers and responsibilities; recommends a benchmarking and monitoring role for the CESR, the Committee of European Banking Supervisors (CEBS) and the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS), close cooperation between them and, above all, appropriate action by Member States to adapt working methods and increase the resources of the national supervisory systems;
9. Is aware that convergence of regulatory powers and sanction systems is more complicated to achieve, owing to differing national traditions; nevertheless, asks the Commission, together with the Financial Services Committee and the CESR, CEBS and CEIOPS, to clearly identify where this diversity leads to problems, and if necessary to come up with proposals for harmonisation;
10. Favours a step-by-step, voluntary, bottom-up approach to standardise and secure the convergence of practices and gradually draw up European Rulebooks, which provide greater transparency and security for market participants throughout the European Union;
11. Notes that European financial markets are very dynamic and that notably the concentration of European Stock Exchanges and further consolidation of major European banks and financial conglomerates require a European response that provides adequate, efficient and coordinated supervision; notes again, in that connection, the challenge of establishing an integrated European supervision system that reflects the need for all Member States to be properly involved in safeguarding the interests of companies and citizens in their territory, wherever financial service providers are based;
12. Urges the European Institutions to assess the cooperation between supervisory authorities and its possible shortcomings, and to investigate further options for European level supervision of transnational major players; expresses a tentative preference for a two-tier system of supervision that combines continuing supervision at national level with efficient supervision at European level for large cross-border players, notably where major

systemic risks exist;

13. Considers as an important step forward the concept of the "lead" or "consolidating" supervisor, with cross-border powers, as set out in the Capital Requirement Directive proposal; advocates the drawing up of adequate rules for the transfer of decision-making powers between supervisors, the resolution of conflicts and for last-resort decision-taking; notes that obligatory mediation by the CESR, CEBS or CEIOPS in the cases for which each is responsible could be a way forward; adds that, in cross-border cases, those committees could act as a second level for complaints and demands for redress from market participants in dispute with supervisors; asks the Commission to draw up the appropriate proposals to allow the European Community committees to perform those roles;
14. Attaches the utmost importance to guaranteeing political accountability of the supervisory system at European and national level; notes gaps in parliamentary scrutiny and democratic control because of a transfer of competences to the European level, be it by explicit European regulation or via voluntary agreements between supervisors in their European coordination structures; intends to organise at the level of its competent committee on a regular and formalised basis hearings with experts and debates with the Commission, the CESR, CEBS and CEIOPS;
15. Is also concerned about the lack of political and democratic accountability where other regulatory bodies such as the International Accounting Standards Board deal with "technical measures" that tend to have an impact far beyond the technical level and touch on major policy principles that should be decided at the political level, as was the case with several International Accounting Standards; proposes an inter-institutional working group for establishing procedures for the decision-making process at European level in cases where the EU will be bound to such external measures;
16. Underlines the importance of building up and maintaining close relations with the relevant counterparts in the USA and other important global financial markets; urges the Commission and the CESR, CEBS and CEIOPS to closely coordinate their contacts with the respective political and supervisory authorities and to inform and update its competent committee on these contacts; intends to intensify its competent committee's contacts with its parliamentary counterparts in the US Congress and elsewhere;

### ***C. Follow up of FSAP***

17. Notes that, apart from the legislative initiatives still in the pipeline, such as those on Capital Requirements for credit institutions and investment firms, Reinsurance, Solvency II, Statutory Audit, Money Laundering, Legal framework for Payments, Clearing and Settlement, and action in the area of corporate governance and company law, together with the significant number of level-2 measures being prepared, the Commission should not bring forward a large number of proposals for new legislation; considers that those the Commission does submit should be duly justified and assessed;
18. Notes the existence of overlapping directives, which might lead to contradictory and duplicate requirements; is in favour of a functional risk-based approach for (future) legislation that provides a level playing field for products provided by similar issuers; asks the Commission to review, and if necessary recast, the present set of instruments in that

perspective, particularly where there is a risk of distortions of competition and/or legal vacuums or even non-compliance;

19. Urges the Commission to consider the feasibility of an overall horizontal regulatory approach for asset management, not in a new, separate pillar, but covering and harmonising the relevant aspects in the markets in financial instruments, UCITS, Institutions of Occupational Retirement Provision and life insurance Directives, in order to avoid unhelpful regulatory fragmentation and arbitrage and to achieve a more complete coverage;
20. Asks the Commission for an assessment of the many national schemes for venture capital, notably for innovative start ups and micro credits; supports the capital requirement directive proposal to give such schemes preferential treatment; calls for the development of the relevant promotional, supervisory and anti-discriminatory measures for cross-border capital-raising from sophisticated investors and investment by venture capital funds;
21. Notes that private equity is currently booming and asks the Commission to monitor this development with a view to assessing the risks for inexperienced investors and improving transparency requirements;
22. Asks for particular attention to be paid to offshore constructions and special purpose vehicles that, in cases such as Parmalat, have been shown to present major risks;
23. Asks the Commission to focus on possible problems with access to and transparency in bond trading in the European Union, which is much larger than the European equity market but is reputed to be less efficient than the bond trading market in the USA;
24. Emphasises the role of competition policy in monitoring and improving the performance of the financial markets in the European Union; urges the Commissioners and the Directorates involved to cooperate closely;
25. Urges the Commission to tackle tax and administrative barriers to the cross-border supply of financial services within the EU;
26. Asks the Commission to build on the initiative reports adopted by the European Parliament during the previous legislature; notes with interest the efforts of the International Organisation of Securities Commissions and the CESR to improve transparency and governance of credit rating agencies, and suggests that the Commission develop a single European passport;
27. Notes the extraordinarily steep growth in the volumes of assets managed through hedge funds and other collective savings products outside the scope of the UCITS directive, which gives rise to major concerns concerning financial stability and investor protection; notes the initiatives of the US Securities and Exchange Commission, and urges the Commission to put forward a proposal for EU-wide guidelines for the regulation of such funds;
28. Notes the crucial importance of reforming and streamlining accounting and auditing standards; emphasises the need for ethical and responsible behaviour not only of auditors

but also of investment banks, law firms and others involved in advising companies on financial management and accounting practices; looks forward to the Action Plan for Corporate Governance being developed further;

29. Requests that the Commission provide a comprehensive study of retail financial markets in the various Member States which identifies the major barriers to further integration;
30. Considers that Member States have long and diverse traditions in consumer protection; notes that the financial services industry is pushing for minimum harmonisation with mutual recognition; recognises the continued risk associated with legal uncertainty for both providers and consumers; sees the potential economies of scale associated with harmonisation; urges the Commission to organise a fundamental discussion on consumer protection in financial services and to clarify the way towards harmonisation;
31. Notes that, despite low demand for cross-border financial services, there is substantial demand from certain groups of internationally mobile consumers, such as cross-border commuters and expatriates, for financial service products with which they are familiar; considers that, for such groups and such a purpose, special "pan-European" financial products, such as mortgage or insurance products, under a uniform 26th European regime (similar to e.g. the European Company Statute) may offer a voluntary option; asks the Commission to assess the feasibility of such a regime for specific financial services;
32. Is aware that, for other consumer groups, the potential benefits of the single market in financial services depend on the activities of foreign operators in consumers' home markets; notes that increased competition could lead to cherry-picking of the most attractive customers to the exclusion of others; concludes that, to keep financial services available and affordable, the accessibility of basic services should be guaranteed to every European citizen; asks the Commission for basic guidelines;

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33. Instructs its President to forward this resolution to the Council and the Commission.

## **EXPLANATORY STATEMENT**

### **on the Post-Financial Services Action Plan**

#### Background

On 11 May 1999, the Commission adopted the FSAP containing a set of political objectives and specific measures aimed at creating an adequate framework for a single European financial services market. Essentially, action was envisaged under three strategic objectives: a single EU wholesale market, an open and secure retail market, and "state of the art" prudential rules and supervision.

At the Lisbon European Council in March 2000, and at the Stockholm European Council in March 2001, the European Heads of State or Government called for full implementation of the Action Plan by 2005. A Committee of Wise Men on the Regulation of European Securities Markets was set up by the Council (Ecofin) in July 2000. This committee suggested in its final report of February 2001 a four-level regulatory approach with the creation of two committees: ESC and CESR. A significant legislative programme - the FSAP - was essentially completed by the end of the last Parliamentary term.

In October 2003 the Commission launched the first step of the FSAP review process with the creation of four expert groups on the banking, insurance, securities and asset management sectors. These reports were published in May 2004 and discussed during the Egmont conference organised by the Commission in June 2004. A synthesis of the responses should be published and the Commission services will submit their assessment on these issues for consideration by the new College of Commissioners early in its mandate. It is then expected that the Commission will come forward with a new set of proposals in the area of financial services in early spring 2005.

#### Current situation

The FSAP has been a success insofar as the 2004 deadline has been broadly met. 39 measures have been adopted including several measures not initially planned by the FSAP. The creation of a true Single market in financial services through completion of the FSAP should increase competitiveness of the European economy, boost investment and growth and improve security and stability. Transparency and protection for all parties involved should also be improved by the FSAP measures, both with respect to financial institutions, issuers (corporate governance) and their intermediaries. Financial system stability and decent protection of (private) end-users remain the main reason for public intervention.

The success of the FSAP can be attributed to shared political will and the existence of an agreed roadmap of concrete measures. This was a powerful recipe for success at least in terms of delivering legislation. It is worth noting that despite the turmoil in financial markets and the downside trend in stock markets over the last four years; the parties involved remain firmly committed to maintaining an ambitious program.

The Euro considerably eased financial integration: it put exchange risk in European cross-

boarder transactions to an end and helped the Monetary Union to fully benefit from the effects of financial markets liberalisation at the international level.

However it is too early to pass a definitive judgement on the FSAP to the extent that many implementing measures have not been adopted yet by the end of 2004 and many transposition deadlines into national laws have not been yet reached (the "first deadline" was 16 October 2004 for the Market Abuse and Insider Dealing Directive). The implementation of these measures will in any case have a considerable impact for European financial markets in the years to come.

The FSAP was assigned demanding objectives: definition of general principles for the functioning of markets and promotion of financial services in Europe as well as improvement of the prudential framework. In that respect, it would be difficult to mention all adopted measures in the context of the FSAP; however some texts are to change significantly the financial services landscape in Europe:

- the Directive on Prospectus, adopted in July 2003, whose purpose was to improve information provided to investors by companies seeking to raise capital in the markets;
- the Directive on Investment Services (MiFID), adopted in April 2004, which aimed both to protect investors and help investment companies to operate at the European level;
- the Directive on Transparency, agreed in April 2004 whose objective is to define information requirements for issuers of securities admitted on a regulated market;
- the Directive on Market Abuse adopted in December 2002, in order to limit the possibilities of market manipulation.

In view of the potential review of the UCITS directives, it is also important to note that the EP initiative report on the future of hedge funds and derivatives adopted in 2004 stresses the need to introduce legislation in order to make lending by EU financial institutions to offshore hedge funds more transparent, as well as the need to develop a light handed and appropriate EU-wide regulatory regime for hedge funds in order to attract them to the EU and provide benefits of a common European passport through mutual recognition.

EU conform implementation in all 25 Member States is crucial for the success of the FSAP and necessary for a successful integration of the European Markets. However, a Single market does not automatically mean a uniform and fully harmonised market but does require freedom of establishment for companies, a level playing field, appropriate protection and information for consumers, and transparency for market participants. In addition, Post FSAP supervision and enforcement of the FSAP regulation are as important as it is to ensure convergence and EU conformity in implementation and application of national FSAP regulations.

Many market participants have requested a "regulatory pause" to absorb properly the current FSAP. The quality of the legislation is paramount, particularly given that the Lamfalussy process is designed to allow a faster regulatory reaction at level 2, in the framework of agreed level-1 principles. Therefore, the Commission should systematically make an extended impact assessment of its draft legislation (including the competitiveness aspects) and be clear in any proposal about the objectives that the legislation is intended to meet.

On numerous occasions the European Parliament has also underlined the overriding importance of transparency and involvement of stakeholders and market participants at all

levels of law-making process. Therefore the Commission's extensive consultation practices in the area of financial services contribute actively to the quality of its proposals and serve as a good example for other policy areas.

The European Parliament has welcomed the improved transparency between European institutions, and the ECON committee took an active role in hearing and communicating with the Commission, the Council presidencies and the European level 3 regulatory and supervisory committees, notably the CESR, and has welcomed the input from market parties and from experts.<sup>1</sup>

The so-called Lamfalussy procedure has been endorsed by the European Parliament under the condition that ratification of the proposed Treaty changes should provide the European Parliament with a call-back right with regard to delegated legislative measures to be regulated at level 2, as has already been granted to the Council. This call back right is a precondition for equal treatment of the co-legislators and was a reason behind the sunset clauses in different Directives. It is also a condition *sine-qua-non* for extension of the Lamfalussy procedure to other sectors. The EP will take due account of the assessment of the Inter Institutional Monitoring Group<sup>2</sup> that regularly monitors the current process.

Supervision and enforcement play a crucial role in the Lamfalussy approach. Mutual recognition and transfer of responsibilities to home country or "lead" supervisors is only feasible and acceptable when convergence of supervisory and enforcement practices is further developed. In its November 2002 resolution based on the VAN DEN BURG report on prudential supervision in the ECON committee the European Parliament promoted a step-by-step approach and suggested many practical measures to reinforce cooperation and mutual trust between supervisors. At the same time it urged for vigilance and a forward looking approach to achieve effective and efficient European level supervision particularly where major systemic risks and major cross-border financial services market players are involved.

The following table shows an overview of the currently active level 2 and level 3 committees:

|   | <b>Banking</b>                                   | <b>Insurance and Occupational Pensions</b>                                    | <b>Securities (including UCITS)</b>                |
|---|--|---|--|
| <b>Regulatory committee</b><br><i>(comitology + acting as advisory bodies)</i>                            | European Banking Committee (EBC)                 | European Insurance and Operational Pensions Committee (EIOPC)                 | European Securities Committee (ESC)                |
| <b>Committee of Supervisors</b><br><i>(independent advisory bodies established as part of Lamfalussy)</i> | Committee of European Banking Supervisors (CEBS) | Committee of European Insurance and Occupational Pension Supervisors (CEIOPS) | Committee of European Securities Regulators (CESR) |

<sup>1</sup> In May 2002, the ECON Committee launched an advisory panel of financial services experts, composed of ten independent experts in financial markets, financial services law and financial services regulation to advise MEPs on upcoming proposals for Directives and Commission's consultation documents.

<sup>2</sup> Inter-Institutional Monitoring Group, Third Report Monitoring the Lamfalussy Process, 17 November 2004.

### Key themes in the next phase:

- ensuring that the Lamfalussy process works well at all 4 levels, with a particular emphasis on supervision and enforcement;
- considering the arguments and the best means for delivering revised or new legislation;
- to find a way out for the barriers and elaborate possible options for a greater retail financial services integration.

### Glossary

|                 |   |
|-----------------|---|
| <b>3L3</b>      | The Three Level 3 Committees: CESR, CEBS and CEIOPS   |
| <b>CEBS</b>     | Committee of European Banking Supervisors<br><i>Established in 2003 as part of the Lamfalussy extension to banking and insurance. It is comprised of representatives of national banking supervisory authorities and central banks. It advises the Commission on draft implementing measures in the field of banking activities and enhances supervisory co-operation and supervision convergence.</i>  |
| <b>CEIOPS</b>   | Committee of European Insurance and Occupational Pensions Supervisors<br><i>Established in 2003 as part of the Lamfalussy extension to banking and insurance. It is comprised of representatives from the national insurance and occupational pension supervisory authorities. It advises the Commission in preparation of draft implementing measures in the fields of insurance, reinsurance and occupational pensions and enhances supervisory co-operation and supervision convergence.</i> |
| <b>CESR</b>     | Committee of European Securities Regulators<br><i>Independent committee established in June 2001 on the bases of the Lamfalussy Report together with the ESC. It is composed of representatives of the national public authorities competent in the field of securities. It assist the Commission in preparation of draft implementing measures of EU framework directives in the field of securities as well as in surveillance of securities' activities.</i>                                 |
| <b>CRD</b>      | Capital Requirements Directive (COM(2004)0486)  |
| <b>Ecofin</b>   | Council of Economics and Finance Ministers of the EU  |
| <b>ESC</b>      | European Securities Committee<br><i>Established in June 2001 on the bases of the Lamfalussy Report together with the CESR . It acts as advisory and regulatory body. When preparing draft implementing measures, the European Commission may consult the ESC before mandating the CESR to prepare technical details. Implementing measures are then submitted to the ESC as part of comitology procedure, where it acts as a regulatory committee.</i>  |
| <b>FSAP</b>     | Financial Services Action Plan (COM/99/0232 final)  |
| <b>FSC</b>      | Financial Services Committee  |
| <b>GAAP</b>     | Generally Accepted Accounting Principles<br><i>US equivalent of IAS</i>   |
| <b>Himalaya</b> | CESR report on "which supervisory tools for the EU securities markets"  |
| <b>IAS</b>      | International Accounting Standards<br><i>EU equivalent of GAAP</i>  |

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|--------------|---|
| <b>IASB</b>  | International Accounting Standards Board  |
| <b>IMG</b>   | Inter-Institutional Monitoring Group<br><i>monitors Lamfalussy Process</i>                          |
| <b>IORP</b>  | Institutions of Occupational Retirement Provision   |
| <b>IOSCO</b> | International Organisation for governmental Securities Commissions                                  |
| <b>MiFID</b> | Markets in Financial Instruments Directive (2004/39/EC)   |
| <b>SEC</b>   | US Securities and Exchange Commission   |
| <b>UCITS</b> | Undertakings for Collective Investment in Transferable Securities Directive<br><i>(2001/108/EC)</i> |