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*Committee on Economic and Monetary Affairs*

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## **DRAFT REPORT**

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

Committee on Economic and Monetary Affairs

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on On current state of integration of EU financial markets 2004/XXX(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<sup>1</sup> on prospectus to be published for securities, the European Parliament and Council Directive 2003/6/EC<sup>2</sup> on insider dealing and market abuse, the European Parliament and Council Directive 2004/39/EC<sup>3</sup> on markets in financial instruments (MiFID) and the European Parliament and Council Directive 2004/109/EC<sup>4</sup> on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC<sup>5</sup>,
- having regard to the European Parliament and Council Directive 2001/108/EC<sup>6</sup> amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), with regard to investments of UCITS and the European Parliament and Council Directive 2001/107/EC<sup>7</sup> amending Council Directive 85/611/EEC<sup>8</sup> on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) with a view to regulating management companies and simplified prospectuses ,
- having regard to the Inter-Institutional Monitoring Group's third Report monitoring the Lamfalussy Process,
- having regard to Rule 45 of its Rules of Procedure,
- 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 the report on prudential supervision rules in the European Union (PA\_TA(2002) 0568),
- having regard to the report on the future of hedge Funds and derivatives

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<sup>1</sup> OJ L 149, 30.04.2004, p 1.

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

<sup>3</sup> OJ L 145, 30.04.2004, p 1.

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

<sup>5</sup> O J L 184 6.07.01.p1.

<sup>6</sup> OJ L 041, 13.02.2002, p.35.

<sup>7</sup> OJ L 041, 13.02.2002, p.20.

<sup>8</sup> OJ L 375,31.12.1985,p.3.

(P5\_TA(2004)0031)

- having regard to the report on the role and methods of rating agencies (P5\_TA(2004)0080)
  - having regard to the Committee of European Securities Regulators (CESR) report on "which supervisory tools for the EU securities markets", known as the "Himalaya" report;
- A. Whereas on 11 May 1999, the Commission adopted the Financial Service 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 the EU level should be clearly identified, argued and assessed on its impact;
- D. Whereas a fair regulatory and supervisory environment provides the framework in which companies can operate efficiently and effectively and should be applied consistently irrespectively of the Member State in which business is being conducted;
- E. Whereas the Lamfalussy process aims to create a viable 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 in its legislative proposals, with 39 out of 42 measures already adopted; notes however that it is too early to pass definitive judgements to the extent that many implementing measures have not been adopted yet; suggests that the Commission conducts 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 Institutions to ensure that the Lamfalussy process works effectively at each level, notably that level 3 Committees perform their roles and that enforcement procedures at level 4 monitor accurate and timely transposition of EU rules into national legislation;
3. Recommends that greater political attention be given to implementation and application of existing legislation; intends to organise systematic ECON (Committee on Economic and Monetary Affairs) dialogues with all actors to provide for democratic scrutiny of the implementation progress;
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 different 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 with a formal dialogue with representatives of associations representing both financial providers and consumers, including small shareholders associations, social partners and SMEs; is attached to the valuable expertise and input of the ECB and national central banks in the Lamfalussy structure;
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, as well as the creation of specialised consumer initiatives in the financial sector;

#### B. Supervisory and regulatory system

7. Notes that the convergence of supervisory practices between Member States' authorities is key for efficient cross-border operations; considers that cooperation and mutual trust between supervisory authorities is crucial, and encourages supervisory authorities to strengthen their mutual relations;
8. Welcomes the so called "Himalaya" report brought forward for consultation by CESR, and agrees with its core recommendations on convergence of supervisory powers and responsibilities; recommends a benchmarking and monitoring role for CESR, CEBS (Committee of European Banking Supervisors) and CEIOPS (Committee of European Insurance and Occupational Pensions Supervisors), close cooperation amongst them, and above all: appropriate action by Member States to adapt working methods and increase resources of the national supervisory systems;
9. Is aware that convergence of regulatory powers and sanction systems is more complicated to achieve, due to different national traditions; nevertheless asks the Commission together with the Financial Services Committee and 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 converge practices and gradually build European Rulebooks, which provide more transparency and security for market participants all over Europe;
11. Notes that the developments in the 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; reiterates in that context the challenge of an integrated European supervision system that reflects the need of 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 Institutions to assess the cooperation between supervisory authorities and its possible shortcomings, and to investigate further reaching options for European level supervision of transnational major players; tends to prefer a two tier system of supervision that combines continuation of proximity national level supervision with efficient European level execution of supervision for large cross-border players, notably where

major systemic risks exist;

13. Considers the concept of the "lead" or "consolidating" supervisor, with cross-border powers as elaborated in the Capital Requirement Directive (CRD) proposal as an important step forward; advocates the design of adequate rules for the transfer of decision-making powers between supervisors, as well as for the resolution of conflicts and last resort decision-taking; notes that obligatory mediation by CESR, CEBS or CEIOPS in respective cases could be a way forward; adds that in cross-border cases they might as well act as the second instance level for complaints and redress for market participants in conflict with supervisors; asks the Commission to elaborate the appropriate proposals for the European committees to perform these 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 transfer of competencies to the European level, be it by explicit European regulation or via voluntary agreements between supervisors in their European coordination structures; intends to organise in ECON on a regular and formalised basis hearings with experts and debates with the Commission, with CESR, CEBS and CEIOPS;
15. Is also concerned about this lack of political and democratic accountability where other regulatory bodies such as the International Accounting Standards Board are dealing with "technical measures" that tend to have an impact that goes far beyond the technical level, and touches on major policy principles that should remain the subject of political choice as was the case with several International Accounting Standards; proposes an inter-institutional working group for setting up 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 CESR, CEBS and CEIOPS to closely coordinate their contacts with the respective political and supervisory authorities and to inform and update ECON on these contacts; intends to intensify ECON's contacts with its parliamentary counterparts in the US Congress and elsewhere;

### C. Follow up of FSAP

17. Notes that besides legislative initiatives still in the pipeline, such as Capital Requirements for credit institutions and investment firms, Reinsurance, Solvency II, Statutory Audit, Money Laundering, Legal framework for Payments, Clearing and Settlement, and actions in the area of corporate governance and company law, together with the significant amount of level-2 measures in preparation, proposals for new legislation should not be abundant and carefully motivated 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 presently it tends to create competitive biases and/or white spots 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 MiFID, UCITS, IORP (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 CRD proposal to give such schemes a preferential treatment; and asks to elaborate on 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 assess risks for unskilled investors and to improve transparency requirements;
22. Asks for particular attention to offshore constructions and special purpose vehicles that in cases such as Parmalat have proved to carry major risks;
23. Asks the Commission to focus on possible problems with access to and transparency in bond trading in Europe, a market much larger than the European equity market, but said to be less efficient compared to the USA;
24. Emphasises the role of competition policy in monitoring and improving the performance of the financial markets in the European Union; urges for close cooperation between the Commissioners and the Directorates involved;
25. Urges the Commission to tackle tax barriers and administrative obstacles against cross-border supply of financial services within the EU;
26. Asks the Commission to build further on the initiative reports adopted by the European Parliament during the previous legislation; notes with interest the activities of IOSCO (International organisation for governmental securities commissions) and CESR to improve transparency and governance of Credit Rating Agencies, and suggests the Commission to develop a single European passport;
27. Notes that hedge funds and other collective savings products outside the scope of the UCITS directive, are growing into sky high figures of managed assets and give rise to major concerns for financial stability and investor protection; notes the initiatives of the US Securities and Exchange Commission (SEC), 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 standards and auditing; 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 a further elaboration of the Action Plan for Corporate Governance;
29. Requires the Commission to provide a comprehensive study of the retail markets in the

different Member States identifying the major barriers for 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 and scope associated with harmonisation; urges the Commission to organise a fundamental discussion on the policy for consumer protection in financial services and to clarify the way to harmonisation;
31. Notes that despite low demand for cross-border financial services, some particular groups of internationally mobile consumers such as cross-border commuters and expatriates have a substantial demand for the use of financial service products they are familiar with across borders; for this particular group and 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 particular financial services;
32. Is aware that for other consumer groups the potential Single market benefits in financial services depend on the actual activities of foreign players in consumers' home markets; notes that here increased competition could lead to cherry-picking of the most attractive customers and 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;
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> <i>(comitology + acting as advisory bodies)</i>	European Banking Committee (EBC)	European Insurance and Occupational Pensions Committee (EIOPC)	European Securities Committee (ESC)
<b>Committee of Supervisors</b> <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 <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 <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 <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 <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 <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

	<i>EU equivalent of GAAP</i>
<b>IASB</b>	International Accounting Standards Board
<b>IMG</b>	Inter-Institutional Monitoring Group <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 (2001/108/EC)