

GREEN PAPER

Green Paper on Financial Services Policy (2005 - 2010)

Text with EEA-relevance

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ANNEX I

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ANNEX II

TIMELINES INCLUDING MEASURES ADOPTED, UNDER NEGOTIATION, UNDER
PREPARATION

GREEN PAPER ON FINANCIAL SERVICES POLICY (2005-2010)

The overall objective of the Commission's financial services policy¹ over the next 5 years is :

The 2005-2010 financial services policy objectives in a nutshell....

- To consolidate progress towards an integrated, open, competitive, and economically efficient European financial market and to remove the remaining economically significant barriers.
- To foster a market where financial services and capital can circulate freely at the lowest possible cost throughout the EU - with adequate and effective levels of prudential control, financial stability and a high level of consumer protection.
- To implement, enforce and continuously evaluate the existing legislative framework, to deploy rigorously the better regulation agenda for any future initiatives, to enhance supervisory convergence and strengthen European influence in global financial markets.

This paper presents the preliminary views of the Commission for its financial services policy priorities for the next five years. It takes into account many convergent opinions expressed in the 2-year consultation process that started with the work of four expert groups, followed by wide public consultation². Other parallel initiatives include the report on financial integration by the EU Financial Services Committee³ and the Draft Report by the Economic and Monetary Affairs Committee of the European Parliament on the current state of integration of EU financial markets⁴.

...the result of 2 years consultation....

The Commission now seeks views on its initial ideas on the future of European financial services policy. Responses should be sent by 1 August 2005, to the following email address: markt-consult-financialservices@cec.eu.int. Responses will be placed on the Commission's website – unless there is an explicit request to the contrary.

open for your comments....

Comments and further preparatory work within the Commission will be taken into account for the determination of the **Final Policy Programme**, which will be presented in the form of a White Paper in **November 2005**.

...views welcomed on this Green Paper

¹ As part of the Commission's overall strategic objectives 2005-2009. see COM(2005) 12, 26.1.2005, Section 1.1, 2nd paragraph and COM(2005) 24, 2.2.2005, point 3.2.1

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

³ Report for consideration by EU Finance Ministers on 2nd June 2004, only in limited circulation.

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

1. KEY POLITICAL ORIENTATION

In the last six years there has been major progress towards an integrated European capital and financial services market. Most of the necessary rules outlined in the Financial Services Action Plan (FSAP) have been agreed on time and are now being put in place. European decision making and regulatory structures have become more rational and efficient as a result of the "Lamfalussy process"⁵. Continued systematic cooperation has developed between the European institutions and market participants. And, in the wake of the euro, political confidence in the integration process has increased.

Real progress over the last 6 years towards an integrated EU market...

The job, however, is not finished. A new phase now begins for the period 2005-2010, with a very different focus:

...but the job is not finished. A new phase begins with less emphasis on regulation and more emphasis on transposition and enforcement of existing measures

- Consolidation of existing legislation, with few new initiatives;
- Ensuring the effective transposition of European rules into national regulation and more rigorous enforcement by supervisory authorities;
- Continuous ex-post evaluation whereby the Commission will monitor carefully the application of these rules in practice – and their impact on the European financial sector.

Member States, regulators and market participants must play their role. If needed, the Commission will not hesitate to propose to modify or even repeal measures that are not delivering the intended benefits. This approach is essential to ensure that the hard-won European regulatory framework will function optimally – for the benefit of market participants, more than 20 million European businesses and 450 million citizens, and thus for the European economy as a whole.

The agenda for the last 6 years was driven by the vision that deep, liquid, dynamic financial markets will ensure the efficient allocation and provision of capital and services throughout the European economy – from wholesale to retail – laying the foundation for higher long term growth and job creation across the economy. The watchwords for the FSAP legislative proposals were cross-border competition, market access, enhanced transparency, market integrity, financial stability and efficiency. Overall, FSAP legislation remained faithful to these guiding principles – and they are still valid today.

Key philosophy of FSAP remains sound...

⁵ The Lamfalussy report, published on 15 February 2001, can be found on the Commission's website: http://europa.eu.int/comm/internal_market/securities/lamfalussy/index_en.htm; see also footnote 8 in Annex I

The economic benefits of European financial integration (Annex I) are beyond doubt. This has also been recognised in the Lisbon strategy⁶ – and confirmed by the Commission's mid-term review of Lisbon with its strengthened emphasis on growth and jobs⁷.

the economic benefits of European financial integration are beyond doubt...

Aligning national regulatory approaches to a common European regulatory system is challenging: it entails considerable “ex-ante” adjustment costs for national enforcement agencies and market participants. These transitional problems pose a challenge in themselves – particularly as they are mainly concentrated over a short period (2005-2007). However, concerns about these transitional costs should not obscure the broader economic benefits. The alternative is stark: fragmented and under-performing financial markets and/or a patchwork of national pools of liquidity subject to divergent, uncoordinated risk-management practices and a higher cost of capital. The FSAP has created an enabling legal framework which should allow issuers, investors and providers of financial services to transact on a pan-European level without undue legal impediment. The key, now, is to make it function well.

...even if there are short-term transitional costs

Today, economic and market evidence suggests that European financial integration is underway in many sectors: in the wholesale markets; in stock exchanges; in financial markets infrastructure, such as clearing and settlement. This has improved conditions for all users of financial services. A European market “reflex” is beginning to emerge, however, much remains to be done both in the above mentioned areas and other areas in retail and wholesale. For example, the area of retail distribution remains fragmented and some markets remain impenetrable. These barriers need to be carefully assessed, in particular to see whether they constitute significant economic impediments to the free flow of capital and financial services.

EU financial markets are integrating but some barriers remain....

A well-functioning risk capital market is a strategically important element of promoting new and innovative firms, entrepreneurship, raising productivity and the sustainable rate of economic growth in Europe. Currently the European market for risk capital is much less effective than for instance the market in the U.S. Therefore, identifying the priorities for any further initiatives in this area is important.

...the important risk capital market is underdeveloped

A rigorous “better regulation” approach will be applied throughout: from policy conception, to open and transparent consultation at all levels, to establishing thorough and convincing economic impact assessments before launching a new proposal and to ex-post evaluation. This is crucial to reduce administrative costs for financial institutions and issuers and to

Better regulation approach must be rigorously applied to all new initiatives

⁶ The Lisbon European Council of 23 and 24 March 2000 agreed on a new strategic EU goal for the next decade: to become the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion.

⁷ Growth and jobs: A New Start for the Lisbon Strategy', February 2005, http://europa.eu.int/growthandjobs/pdf/COM2005_024_en.pdf

raise the competitiveness of the European financial industry.

These disciplines should also be applied by the European Parliament and the Council to avoid evidence-based Commission proposals being mushroomed into unnecessary, sapping complexity. In particular, Member States should avoid adding layer upon layer of regulatory additions that go beyond the Directives themselves – so-called “goldplating” – thus stifling the benefits of a single set of EU rules and adding unnecessary burden and cost to European industry⁸.

Complex rules and unhelpful “goldplating” must be avoided....

As before, there must be an evidence-based expectation that any new European proposal for financial services legislation and implementing rules will yield significant economic benefits in terms of efficiency and stability. A yardstick should be the extent to which measures facilitate cross-border business and enhance the competitiveness of Europe’s financial markets, while, at the same time, protecting internal stability.

...and any further EU initiatives must be based on clear evidence of economic benefits

The Commission’s approach will continue to build as much consensus as possible in any preparatory phase, working closely and transparently with Member States and the European Parliament, with EU supervisory networks (CEBS⁹, CEIOPS¹⁰, and CESR¹¹), with the European Central Bank, market participants and more intensely in the future with consumer groups¹². Regulatory philosophies differ among Member States – so the art of European legislation in these complex areas is to find the balance best serving Europe’s interest. Any legislation should respect the subsidiary and proportionality principles of the Treaty¹³ and strengthen competition.

Commission will continue to work at all levels to build consensus....

...respecting the principles of the Treaty

The important debate on European supervisory convergence now needs to be taken forward. The supervisory system must have the necessary instruments to make European financial services regulation work effectively and thus facilitate pan-European business. The outcome must ensure full democratic accountability to the Member States and European Parliament. In this context, the entry into force of the European Constitution¹⁴ is important for the medium term continuity and sustainability of the Lamfalussy process¹⁵.

EU supervisory convergence debate is underway – ensuring EU rules work in practice and political accountability is key

⁸ See Commission Recommendation on best practices for Member States’ transposition of EU legislation, SEC2004(918) final.

⁹ Committee of European Banking Supervisors, established as per 1 January 2004.

¹⁰ Committee of European Insurance and Occupational Pensions Supervisors, established as per 24 November 2003.

¹¹ Committee of European Securities Regulators, established as per 7 June 2001.

¹² The FIN-USE forum of financial services experts is already providing the Commission with valuable input from a user perspective.

¹³ Where legislative solutions appear justified, these are enacted on an EU-wide basis only if local measures clearly demonstrated to have failed or to be impracticable; their effects should not go beyond those needed for the good functioning of the internal market.

¹⁴ In particular (new) article I-36 that provides call-back rights to the European Parliament and to the Council for controlling delegated regulations adopted by the Commission.

¹⁵ The ‘sunset clauses’ in the securities area come into effect from 2007 onwards. Under these clauses, delegated powers to the Commission to adopt implementing measures through

With the regulatory framework and supervisory structures largely in place, the Commission foresees that synergies with different policy areas – particularly competition and consumer policy - will grow over the next 5 years. Some sectoral enquiries in the financial services area have already been announced. The Commission would like market participants to play a more effective and pro-active role in consistently signalling clear infringements or anti-competitive behaviour from whatever source – first at national level and then to the Commission.

Commission will maximise policy synergies over next 5 years, especially with competition and consumer policy

Other horizontal and complementary policy areas (corporate governance, company law reform, accounting, statutory auditing) are also of immense importance in building confidence and transparency in European financial markets. Although outside the scope of this Paper, work in these areas will progress in line with the agreed timetables¹⁶ and the “better regulation” principle-based and simplification approach. Companies, accountants, auditors and other market participants must apply the highest ethical standards in their work. National supervisors must ensure they are effectively applied, also vis-à-vis off-shore financial centres. If not, market and political pressure for additional regulatory intervention in these and other domains will intensify. Currently, this issue is further reflected on in the revision of the 4th and 7th Company Law Directives on accounting standards. The objective is to strengthen disclosure when using entities established in off-shore financial centres.

Corporate governance, company law reform, accounting and auditing are key horizontal policies – but outside the scope of this Paper...

The debate about the future governance, funding and political accountability of global standard-setting bodies, such as the International Accounting Standards Board, are of growing political importance. The Commission considers that public oversight of these structures must be strengthened, to ensure appropriate reflection of stakeholders, satisfactory transparency, due process and sustainable financing.

...political accountability for global standard setters is important as well

Looking outwards, Europe has a major strategic opportunity to influence the regulatory parameters of the emerging global financial market. That is why the deepening of the EU-US financial markets dialogue and strengthening financial relations with Japan, China and for instance India are so important (see 3.4). The Commission favours widening the agendas of these dialogues, making them more forward-looking and drawing more on market participants' input. Further efforts to open third country financial markets will be pursued in the Doha trade round as well as in bilateral and regional trade agreements.

Externally, a major opportunity for the EU to deepen relations with the US and Japan, China and India

comitology (level 2 of the Lamfalussy process) will expire, unless the Council and the European Parliament explicitly agree to extend them (which will be a co-decision proposal by the Commission).

¹⁶ The Corporate Governance and Company Law Action Plan; including actions on: IAS implementation; 8th Company Law Directive; acceptance of IAS in third country jurisdictions, such as the US; transparency of corporate governance structures; improving shareholder structures etc.

The Commission would be interested to hear from stakeholders:

- whether they agree with the overall objectives for the Commission's policy over the next 5 years;
- whether they agree with the key political orientation described above.

2. BETTER REGULATION, TRANSPOSITION, ENFORCEMENT AND CONTINUOUS EVALUATION

Improved economic performance and welfare creation will largely depend on the capability of European institutions, supervisory authorities and market participants to ensure that the existing rules are consistently applied and enforced - so that best practice becomes the norm (Annex I Section II). This way a level playing field is created – with consistent and accurate interpretations of Community law – avoiding legal uncertainties and ambiguities. This means enforcement mechanisms need to be strengthened and interconnected across the Member States, *inter alia*, via the European supervisory networks. This shared responsibility is a major challenge in a European Union of 25 Member States – with further enlargements in the pipeline.

The shared responsibility of consistent application and enforcement of existing EU rules is a pre-requisite for financial integration

The priorities are:

- Continued application of open and transparent policy making with extensive use of consultation mechanisms at all levels;
- Simplifying and consolidating all relevant (European and national) financial services rules¹⁷;
- Converging standards and practices at supervisory level, while respecting political accountability and current institutional boundaries;
- Working with Member States to improve transposition and to ensure consistent implementation;
- Evaluation whether the existing directives and regulations are delivering the expected economic benefits and repealing measures that do not pass this test; and
- Ensuring proper implementation and enforcement, if needed, by infringement procedures building on existing legislation and case law.

Priorities measures are further outlined in Annex I, Section II

¹⁷ A few pilots for simplification might be chosen in the coming years. Launching a feasibility study might be helpful to find out if over time all rules can be fused in one body of consistent law (some sort of 'Financial services rulebook').

The Commission would be interested to hear from stakeholders:

- whether they agree with the priority measures identified; and
- which additional measures should be taken to foster consistent application and enforcement of European legislation.

3. CONSOLIDATION OF FINANCIAL SERVICES LEGISLATION OVER THE 2005-2010 PERIOD

3.1. FINISH REMAINING MEASURES

ONGOING LEGISLATION AND MEASURES IN PREPARATION

The first priority of the next 12 months is to complete the unfinished business of the remaining elements in the negotiation phase at the European Parliament and the Council and of the key measures now under preparation by the Commission.

Priority is the completion of FSAP 'leftovers'

The latter are a (possible) directive on post-trade financial services (clearing and settlement), the new Insurance Solvency framework and a (possible) legislative proposal on payments (see Annex II). This preparation involves both thorough impact assessments and wide stakeholders' consultations.

AREAS WHERE THE COMMISSION MAY DECIDE NOT TO MAKE A PROPOSAL

The Commission is committed to act only where European initiatives bring clear economic benefits to industry, markets and consumers. Concretely, the Commission is currently looking into the areas of **rating agencies** and **financial analysts**, where – after having received the advice of CESR and CEBS – a decision should be made if additional legislation is needed at this stage or if the current provisions in the Market Abuse Directive as well as self-regulation¹⁸ and monitoring mechanisms could be sufficient. It is already clear that the Commission will not propose any implementing measures under the **Take Over Bids Directive**.

Commission will not propose legislation if clear economic and other benefits cannot be demonstrated

However, if the Commission would decide not to propose legislation in these and other areas, the Commission would not hesitate to revisit this position, should future market developments suggest that robust intervention is needed.

AREAS WHERE THE COMMISSION MAY RECONSIDER ITS PROPOSAL

Following EU Member States agreement to **The Hague Convention** (a

Commission might consider

¹⁸ For instance the Code of the International Organisation of Securities Commissions (IOSCO).

intermediary¹⁹), the Commission made a proposal for signature but recently some Member States and the ECB have expressed concerns with the Convention. The Commission will prepare, by end 2005, a legal assessment evaluating the concerns raised and then decide whether changes are needed to the current signature proposal or not.

withdrawing proposals currently under discussion

3.2. EFFICIENT AND EFFECTIVE SUPERVISION

As European financial integration progresses, new challenges for supervisors are emerging. Monitoring cross-border risk is becoming more critical and although integration will strengthen overall stability, the potential for 'spill-over effects' such as a system failure affecting several financial markets and/or groups that operate on an EU-wide basis will increase. The Commission believes in tackling these challenges through an evolutionary, bottom up approach (Annex I Section III).

Supervisory cooperation is key in underpinning financial integration and should be strengthened

3.3. ENABLING CROSS-BORDER INVESTMENT AND COMPETITION

Consolidation in the financial services sector should be driven by the market. At the same time, financial soundness and stability of the financial system must be ensured in some areas. The costs and barriers to cross-border transactions constitute a formidable obstacle to cross-border investment and economic rationalisation within Europe. The Commission has identified in a preliminary report the potential barriers and has invited stakeholders to come forward with – in their view – the most inhibiting obstacles²⁰. Eliminating or at least reducing these unjustified barriers will strengthen the competitiveness of the sector and of the economy at large – and foster growth and job creation (Annex I Section IV).

Removal of unjustified barriers to consolidation will bring economic benefits

3.4. THE EXTERNAL DIMENSION

The Commission will monitor carefully that candidate countries fulfil their responsibilities in the financial services area. Furthermore, enhancing European influence on the global stage and ensuring the global competitiveness of the European financial sector should remain a priority. Financial services are a global business - developments in one jurisdiction have an impact on others. Annex I Section V outlines the (regulatory) objectives identified and the good progress made in building open, *ex-ante* regulatory dialogues with the US and China. The Commission would also like to deepen financial relations with other countries, like Japan, and, if possible, also with India over the next 5 years

The EU's financial sector must be competitive in global markets...

...financial markets regulatory dialogues need to be deepened, with the US, but also with Japan, China and possibly India

¹⁹ A uniform legal formula for determining proprietary rights is considered particularly useful in cases where securities are held through a chain of financial intermediaries in different countries.

²⁰ See http://europa.eu.int/comm/internal_market/finances/cross-sector/index_en.htm#obstacles

The Commission would be interested to learn from stakeholders:

- whether they agree with the identified measures where the Commission might decide to take no action, or if there are other concrete areas where the Commission should not bring forward proposals presently in the pipeline or, indeed, areas where the Commission should consider withdrawing;
- their assessment if the existing regulatory and supervisory framework is sufficient to tackle the supervisory challenges in the years ahead, what are the gaps and how these can be filled most effectively;
- what are the objectives, sectors to be covered and the priority areas in regulatory and cooperative activities on a global scale.

4. POSSIBLE, TARGETED NEW INITIATIVES

In line with the opinions expressed in the 2-year consultation process that started with the work of four expert groups, the Commission has identified two clear policy areas where initiatives might bring benefits to the European economy: **asset management** (Annex I Section VI) and **retail financial services**. Work in these areas will be bottom up, consultative, and working with the grain of the market.

Commission identified two areas for further work: asset management and retail financial services

The post-FSAP stocktaking process identified the market for retail financial services as an area requiring further attention (Annex I Section VII). While significant progress has been achieved to integrate financial markets, retail financial services markets – *i.e.* financial services offered to consumers, remain deeply fragmented.

Retail financial markets are still fragmented

The role of the Commission is to facilitate the provision of retail financial services in Europe. In cross-border service provision, four distribution channels can be identified: (i) a consumer purchases the service from a provider in another Member State by travelling to that Member State; (ii) a firm markets/sells to consumers in another Member State without establishing; (iii) a firm establishes in more than one Member State and adapts its offerings to local markets; and (iv) services being designed on a pan-European basis, even if delivered locally.

Currently delivery by branches, intermediaries or other distributors is the most likely business model

Although the approach of creating pan-European passports for businesses and consumers seems to be the most beneficial one, possible alternative regimes, such as so-called “26th regimes” for those operators and consumers who want to be active across borders, leaving the 25 sets of national rules untouched, are currently debated. The benefits of such “26th regimes” remain to be proven and reaching agreement on optional European standards designed only for certain products will be difficult. However, the Commission takes note of the current debate and will respond to the call to explore such 26th regimes further, by launching a feasibility study, *e.g.* in the areas of simple (term-life) insurance and

The “26th regime” is worth exploring, e.g. for simple (term-life) insurance and savings products

savings products.

The Commission thus proposes to establish Forum groups for specific retail products, consisting of experts in the field, representing industry and consumer interests, to identify any barriers and examine possible solutions. This work will be supported by extensive research.

The Commission will establish Forum groups, use extensive research

AREAS OF POSSIBLE FUTURE ACTION

Mortgage credit is one area where further retail integration might be beneficial – while the number of products in the market should not be limited; a separate Green Paper, planned for summer 2005, will address the 48 recommendations coming from the Mortgage Credit Forum Group's report. Concrete initiatives could be announced – after thorough consultation - earliest in 2006.

For mortgage credit, a separate Green Paper is planned for this summer

Based on the conclusions coming from the expert groups and the views expressed in the public consultation, the following areas might merit further consideration as well:

Three other areas are already identified by the Commission for further consideration

- **Codification and possibly simplification of existing rules on information requirements**, in particular with a view to ensuring consistency and coherence between different texts²¹;
- **Financial mediation**, in particular by allowing cross-border service provision by knowledgeable and reliable intermediaries, while applying full transparency on fees and relationships with providers. Work has already been done in this area²². However, given developments in products and the structure of financial providers, the need for further alignment of rules on conduct of business, sales advice and disclosure should be examined;
- **Bank accounts**: in particular looking into obstacles to opening accounts cross-border, as well as issues regarding their handling, portability, transferability and closure. There appear to be particular problems associated with, e.g. non-residency and identification requirements.

The Commission would be interested to learn from stakeholders:

- whether they agree with the new identified priority areas;
- what are the (dis)advantages of the various models for cross-border provision of services, whether there is a business case for developing a 26th regime, and which business lines might benefit;
- how to enable consumers to deal more effectively with financial products and whether this means more professional and

²¹ The Commission is developing a Common Frame of Reference as a tool to use in improving the coherence of European contract law.

²² Under the Insurance mediation Directive and in the Markets in Financial Instruments Directive.

independent advice, improved education or financial literacy training are needed;

- whether they agree with the issues identified in the above list of retail products, or if they would suggest other areas where additional action at EU level could be beneficial.