



FIN-USE Annual Report 2004/5

1.	INTRODUCTION	2
2.	TERMS OF REFERENCE	2
3.	MEETINGS OF THE FORUM	3
4.	<i>FIN-USE</i> RESPONSE TO EUROPEAN FINANCIAL SERVICES INITIATIVES	5
5.	FRAMEWORK RESEARCH CONTRACT	8
6.	EVENTS WHERE <i>FIN-USE</i> HAS BEEN INVITED AND ATTENDED.	8
7.	<i>FIN-USE</i> WEBSITE	9
8.	FUTURE WORK OF <i>FIN-USE</i>	9
APPENDIX A - LIST OF FIN-USE MEMBERS.....		11
APPENDIX B: FIN-USE CHARTER		14
APPENDIX C: EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS OF FIN-USE ON THE REPORTS ON BANKING, ASSET MANAGEMENT, SECURITIES AND INSURANCE OF THE POST FSAP STOCKTAKING GROUPS		18
APPENDIX D: EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS OF FIN-USE ON THE NEW LEGAL FRAMEWORK FOR PAYMENTS IN THE INTERNAL MARKET		21

1. INTRODUCTION

This is *FIN-USE* forum's first annual report which is a requirement under the Mandate set by the European Commission.

FIN-USE was set-up by the European Commission in 2004 as an independent expert forum to help meet the pressing need to improve policy-making in the field of financial services through a more structured dialogue with consumers and small business in the European Union. The forum is represented by a panel of experts (Members of the Forum are listed in Appendix A) who have backgrounds in consumer protection, small business, academe and from both consumer and small business organisations.

The mandate of *FIN-USE* is to strengthen the role of consumers and small businesses in the on going evolution of the EU financial service sector. Historically, the national regulation of these matters has often involved ministries of justice, consumer protection, economics and enterprise. *FIN-USE* begins with a similarly broad view of the range of societal interests that are affected by the financial services sector. In its perspective, financial services are not only a tool to increase income and wealth but also a means by which adequate consumption and employment can be achieved.

2. TERMS OF REFERENCE

FIN-USE terms reference deals with two main roles; they are:

- To respond to the Commission's requests for opinions and recommendations on initiatives affecting users of financial services in the Internal Market.
- To react to submissions from the Commission, proactively seeking to identify key financial services issues which affect users in the internal market.

3. MEETINGS OF THE FORUM

There have been a total of seven *FIN-USE* Forum meetings during 2004/5. The following details the main issues considered at these Forum meetings:

2nd April 2004.

- Aims and objectives of *FIN-USE*
- Presentation of the Commission's current initiatives in financial services
- Research to underpin *FIN-USE* opinions

11 May 2004

- Election of Chairman and Vice Chairman
- Approval of the *FIN-USE* Charter (see Appendix B)
- Presentation by Commission's staff and discussion of the four post FSAP stocktaking reports on which *FIN-USE* was requested to deliver its first opinion. Working methods were set in place for the Forum to respond to the reports.

17th June 2004

- Discussing the *FIN-USE* opinion on the post FSAP stocktaking reports. A detailed structure of the report was agreed and specific tasks were allocated to *FIN-USE* Forum members.
- Future work of the Forum was discussed which included responding to the mortgage forum group report and the New Legal Framework for payments.
- *FIN-USE* research budget

7th September 2004

- Finalising *FIN-USE* opinion on the post FSAP stocktaking expert group reports.
- A discussion regarding *FIN-USE* resources to effectively respond to European financial service issues.

19th October 2004

- Post FSAP Report - Feedback from Commission
- Discussion of Working methods: agreement that future work should be allocated to designated subgroups ideally of 3 to 4 Forum members
- New Legal Framework: presentation by Commission followed by a discussion and organisation of work.
- Future work of the Forum:
 - Report of the Mortgage Forum – presentation by the Commission
 - Corporate Governance Action Plan – presentation by Commission
 - Mergers and Acquisitions - Discussion by members of Forum

7th December 2004

- New Legal Framework - report from sub group
- Corporate Governance Action Plan (Shareholder Rights) – Organisation of sub group
- *FIN-USE* Policy paper – report of sub group
- Annual Report – organisation of work
- Report on Credit – discussion of Forum and organisation of subgroup.
- Research Contract – a discussion of the results of questionnaire sent to Forum members identifying their preferences
- Conference – discussion on aims and relevance
- Additional Resources – the need for additional resources to fund meetings of the subgroups were discussed.

17th March 2005

- Preparation of the Annual Report

- *FIN-USE* opinion on credit
- *FIN-USE* research contract
- Follow-up on *FIN-USE* opinions (post FSAP, New Legal Framework and corporate governance)
- Possible new issues (asset management and cross-border banking mergers and acquisitions)
- *FIN-USE* public relations (website and press releases)
- External representation (CEBS, CESR)

4. *FIN-USE* RESPONSE TO EUROPEAN FINANCIAL SERVICES INITIATIVES

FIN-USE responded to three initiatives during the year. The following details a brief summary of these responses:

Reports on Banking, Asset Management, Securities and Insurance of the Post FSAP Stocktaking Groups

FIN-USE found the absence of any serious consideration of a user perspective a disturbing feature of the four reports. The reports implied that an enlarged market place for financial services would benefit both the demand and supply sides of the market. This, however, was not necessarily the case for consumers and small businesses. *FIN-USE* supported the view that evidence based evaluations to determine that there are clearly identified benefits to users should be employed.

FIN-USE recognised that important role that national consumer organisations played in promoting the well being of users. These organisations should be further promoted in protecting consumers and small businesses in the enlarged market. If users of financial services products were to fully benefit and be protected in the enlarged market it was important that the user perspective was represented in policy making at both European and national levels.

The reports generally promoted self regulation by the respective industries. *FIN-USE* was sceptical of the advantages to users and believed that there was a need to carefully balance regulations

between those that were adopted and introduced at EU level, at national level and self regulation approaches.

The complexity of products and information asymmetry led to the need for intermediaries services to advise users. The reports tended to ignore the important role of intermediaries. *FIN-USE* called on the regulators to address this deficiency by ensuring consumers and small businesses were adequately protected.

The Executive Summary and the Key Recommendations of FIN-USE are attached in Appendix C of this Report. The full response can be found on the FIN-USE website at the following address:

Response to public consultation on Shareholders' Rights

This was *FIN-USE's* first response to the European Commission's Corporate Governance Action Plan. *FIN-USE* believed that corporate governance had a key role in protecting all stakeholders in the financial services markets. Governance problems occurred due to the separation of ownership and management of business entities, and the resulting information asymmetry that inevitably existed in such relationships. Effective shareholders rights were fundamental to good corporate governance.

FIN-USE believed that there were some fundamental principles on shareholders' rights from a user's perspective which it addressed in the response. These included the following:

- A clear distinction should be made between shareholders as investors and securities intermediaries. There should be a direct relationship between the investor and the issuer of securities. This relationship should be accommodated through technology.
- To be effective, from an investor's perspective, the new Directive must focus on the regulation of dematerialised securities and how the investors were entitled to exercise their rights.
- The structure of the securities custody system and its development was fundamentally a technical issue rather than a legal one. There was a need to improve the custody system

to ensure that shareholders can exercise their rights directly vis-à-vis the issuer. The legal issues could then be addressed.

The full FIN-USE response can be found on the FIN-USE website at the following address:

The New Legal Framework for Payments in the internal market

FIN-USE responded to the European Commission's Working Document Version 5 on the New Legal Framework for Payments in the Internal Market.

FIN-USE in general supported the objectives of the proposed directives, in particular, creating a consistent level of consumer protection and improved transparency. The free movement of goods and services can only function properly if users had access to cheap, efficient and secure payment services. Consumer protection was therefore critical to encourage users to shop across the Internal Market and to stimulate competition between providers.

There were a number of issues that *FIN-USE* believed the document should address more forcefully to enhance the Commission's objectives. These issues included:

- The level of consumer protection was too low. The level of protection needed to be enhanced to give consumers and small businesses the necessary confidence in such transactions.
- Information needed to be timely, comparable and justifications given for unilateral changes of exchange or interest rates.
- Refunds should be made possible in all cases where either the authorisation did not cover the exact or intended amount of the payment or the authorisation did not include the exact or intended payee
- Although the maximum harmonisation approach had been chosen, some aspects such as sanctions and consequential damage that are vital for consumers were not considered
- A number of topics were missing in the draft directive:
 - non-resident accounts

- access to bank accounts and basic banking services
- customer mobility
- joint liability
- scope (the situation in France – frequent use of cheques - was not dealt with). In this case a study of the economic impact would be very important.

The Executive Summary and Key Recommendations are attached in Appendix D. The full response can be found on the FIN-USE website at the following address:

5. FRAMEWORK RESEARCH CONTRACT

The objective of the Framework Research Contract is to give *FIN-USE* evidence to formulate its opinions. Currently there is a dearth of research to support policy initiatives in the field of financial services. The allocated resources for the contract and the breadth of the subject of financial services required *FIN-USE* to identify four topics of research. This was carried out via a questionnaire to all Forum members. The following studies were chosen:

- Information asymmetry and transparency of financial services products
- Consumers' experience of retail financial services across the European Union.
- Measurement of consumer confidence in financial services and their appetite to contract cross border
- Effectiveness of self regulation at national and at European Union level

The Forum is currently discussing the appropriate methodology to adopt and identifying relevant research questions in developing the tender specifications for the contract.

6. EVENTS WHERE *FIN-USE* HAS BEEN INVITED AND ATTENDED.

The following detail these events:

- ***Conference on the POST FSAP Stocktaking Reports*** – Each of the four reports were discussed by a High Level

Panel. *FIN-USE* were not invited to participate in any of the Panels. It was also noticeable that only one user representative was invited on the Panels.

- **Committee of European Banking Supervisors (CEBS) – Consultative Panel** – *FIN-USE* has nominated two experts to this panel, the role of which is to express views on CEBS work programmes, provide comments on how CEBS is developing its role and the adequacy of consultation with external parties. They have so far attended one meeting on 11th February 2005.
- **Inter-Institutional Monitoring Group (IIMG)** – One *FIN-USE* expert attended this group, which was established to monitor the Lamfalussy Process. *FIN-USE* has requested user participation in the consultative process and for adequate resources to be made available for *FIN-USE* to fulfil its task in the consultation process. It also asked for an executive summary or list of key points to be provided in each language.

7. *FIN-USE* WEBSITE

During the year a Website was built. This enables *FIN-USE* to independently make publicly available its objectives, charter, work that it has completed and future issues it is to address.

http://europa.eu.int/comm/internal_market/fin-use_forum/index_en.htm

8. FUTURE WORK OF *FIN-USE*

The following details the subjects that *FIN-USE* plan to address during 2005/6:

- Credit to consumers and small businesses with particular regard to the Mortgage Forum Report
- EC's Corporate Government Action Plan
- Mergers and acquisitions and their impact on consumers and small business
- Regulation of external rating agencies
- Post FSAP – Examination of the Synthesis paper followed by a response to the EC's Green Paper.

- Payments in the Internal Market
- Commission's Green Paper on Asset Management
- Implementation of Basel II
- Supervisory cooperation
- Other possible areas subject to the outcomes of research projects

* * *

Postscript

Establishing *Fin-use* as a coherent and effective body has been a major task for us all and we are grateful for the assistance of a number of Commission Officials. We should like to pay a special tribute to our Secretary, Tobias Mackie, who has worked very hard to ease our path and has provided us with a ready source of valuable advice and experience

APPENDIX A – LIST OF *FIN-USE* MEMBERS

Name	Background
<p>Professor Riccardo de Lisa</p> <p>Italian</p>	<p>Riccardo De Lisa is a professor of Banking at the Faculty of Economics of Cagliari University. He has been visiting scholar at New York University and has over 15 years experience in the field of applied economic research on Financial and Banking Systems, with a special focus on SMEs's access to finance and measuring and managing credit risk. He published had several articles in this field and organized international conferences. He is a scientific coordinator of a pan-European research on the impact of Basel II on banks and SMEs. He also works as a scientific contributor for the European Forum of Deposit Insurers.</p>
<p>Professor Robin Jarvis</p> <p>British</p>	<p>Professor Robin Jarvis is Head of Small Business at the Association of Chartered Certified Accountants. He is also a Professor of Accounting and Finance at Kingston University. Robin's research interest is in small and medium size entities. He is the author of eight books and a number of research publications. He is a member of the SME Advisory Working Group of the International Accounting Standards Board (IASB), IFAC Small and Medium Practitioners Task Force, European Financial Reporting Advisory Group (EFRAG) and Federation des Experts Comptables Europeens (FEE) SME/SMP Working Group.</p>
<p>Mr Benoît Jolivet</p> <p>French</p>	<p>Since 2003, Benoît Jolivet has occupied the post of ombudsman for the French Banking Federation (FBF). Prior to assuming this position, he has had a long and distinguished career in the financial services sector, working for the French Treasury Department, the French Finance Ministry, Union des Assurances de Paris, the Consultative Committee for Banking Affairs, the Caisse d'amortissement de la dette sociale and the Conseil National de Crédit.</p>
<p>Mr Peter Knutsson</p> <p>Swedish</p>	<p>Peter Knutsson is Senior Advisor at the Secretariat for Strategy and International Affairs at the Swedish Competition Authority. Prior to assuming his position at the Competition Authority in October 2004, he was employed as Head of Unit at the Swedish Consumer Agency, with responsibility for financial services. He has also worked at the Swedish Financial Supervisory Authority as an adviser and at DG SANCO as a national expert.</p>

<p>Professor Udo Reifner ¹</p> <p>German</p>	<p>Udo Reifner (Chairman of FIN-USE in 2004) is Professor of Commercial Law at the Hamburg University Faculty of Economics and Director of the independent institute for financial services e.V, where he conducts research especially on credit and insolvency law. He has held numerous academic posts and published on various subjects, including on bank law, insolvency law, sociology of law, history of law, legal theory, financial services, consumer protection and social economy. He is co-editor of the Journal „Verbraucher und Recht“ (Consumer and Law) and corresponding member of the Journal of Consumer Law.</p>
<p>Mr Max Reuter</p> <p>Austrian</p>	<p>Max Reuter established the Financial Service Testing Unit at the Austrian Consumer Association VKI. Since 1990 he has been head of Financial and Public Services. He is also a member of working groups at the Austrian Standardization Organisation as well as other committees dealing with Consumer Protection in Financial Services. Actually he is involved in several studies for Austrian Authorities and Institutions as well as for DG SANCO.</p>
<p>Mr Paul Salvidge</p> <p>British</p>	<p>Paul Salvidge has, since 2000, been a member of the U.K. Financial Services Authority’s Consumer Panel, an independent body that seeks to represent the consumer interest in the financial services sector. Amongst other work, it publishes an annual report which assesses how well the FSA has carried out its responsibilities. Before that, he was a civil servant, with regulatory responsibilities including consumer protection, competition policy and financial services regulation.</p>
<p>Mr Risto Suominen</p> <p>Finnish</p>	<p>Risto Suominen is a Director in the Federation of Finnish Enterprises. He is responsible for financing, taxation and economic policy. He is also a member of the board of directors of Finnvera and Pension-Tapiola, as well as a member of CEIES – the advisory committee for EUROSTAT</p>
<p>Professor Leo Verhoef²</p> <p>Dutch</p>	<p>Leo Verhoef is professor in Entrepreneurship at Eindhoven University of Technology in the Netherlands. At present he also is an advisor to the Dutch department of Mazars Accountants, the Dutch Institute for Chartered Accountants (NIVRA), a Member of the Council of Rabobank Eindhoven,</p>

¹ Professor Reifner stepped down from the chairmanship and the Forum in January 2004

² Professor Verhoef stepped down from the Forum in March 2004

	<p>chairman of the Rabobank Eindhoven Innovation Investment Fund, member of the jury in two local business awards, lecturer at TIAS Business School, The Dutch Association of Real Estate Agents (NVM) and the Dutch Institute for Banks and Assurance Companies.</p>
<p>Mr Dónal Walshe</p> <p>Irish</p>	<p>Dónal Walshe is Secretary General of EURO COOP, the European Community of Consumer Co-operatives. He has previously worked at the European Association of Co-operative Banks where his responsibilities included consumer policy, and subsequently as EMU Project Manger for the Irish Bankers' Federation and Irish Mortgage Council. He was also a member of the Euro Changeover Board of Ireland. In addition to <i>FIN-USE</i>, Dónal sits on several EU committees and advisory forums, including the European Commission European Consumer Consultative Group, European Central Bank Cash Users Group, Trans-Atlantic Consumer Dialogue and Co-ordinating Committee of European Co-operative Associations.</p>
<p>Mr Manfred Westphal</p> <p>German</p>	<p>Manfred Westphal is head of the Financial Services Department of Verbraucherzentrale Bundesverband (vzbv), the Federation of German Consumer Organisations, and has been working for vzbv and its predecessor organisation since 1993. In his current position, he also is a representative of the Consumer Protection Panel of BaFin, the German financial supervisory authority, and European consumer representative in the Consultative Panel of CEBS, the Committee of European Banking Supervisors.</p>
<p>Professor Fernando Zunzunegui Pastor</p> <p>Spanish</p>	<p>Fernando Zunzunegui is a Professor of Banking Law and Senior Partner of the law firm Zunzunegui & Escolar, which acts for users of financial Services. He is currently an advisor of the Spanish Independent Financial Advisors' Association (ANAF) and was previously the legal counsel for Iberclear (Spanish Central Securities Depository). He also works as an international consultant, including projects for the World Bank and the BID focusing on transparency and investors protection. He is the author of several books and many articles on financial market law.</p>

APPENDIX B: FIN-USE CHARTER

1. Preamble

Whereas:

- 1.1. The Commission's Communication on a Consumer Policy Strategy (COM (2002) 208 final) proposed reinforcing the regulatory approach in the field of financial services based on early, broad and systematic consultation of all interested parties including , including consumers and end-users.
- 1.2. The proposed setting up of a forum from the perspective of users of financial services is in line with the ambitions of opening up policy making and making it more accountable, as set out in the Commission's White Paper on European Governance (COM 2001 428 final).
- 1.3. There is a pressing need to improve policy-making for the Internal Market in the field of financial services through a more structured dialogue with consumers and SME's (to be described hereafter as "users of financial services").
- 1.4. The mandate of this Forum should be defined and its administration organised.

2. Mandate of the Forum

- 2.1. The Forum shall respond to the Commission's requests for opinions and recommendations on initiatives affecting users of financial services in the Internal Market.
- 2.2. The Forum shall, in addition to reacting to submissions from the Commission, proactively seek to identify key financial services issues which affect users in the internal market.
- 2.3. The Forum shall produce an annual report of its activities, including any opinions it has formulated over the course of the exercise. This report shall be addressed to the Commission.

3. Status of the *FIN-USE* Forum

- 3.1. The *FIN-USE* Forum shall be considered as an independent expert forum.

- 3.2. The opinions expressed by the *FIN-USE* forum shall in no way prejudice the Commission's right of initiative, nor shall those opinions necessarily represent the views of the Commission.

4. Constitution and Composition of the Forum

- 4.1. Experts shall be appointed ad personam by the Commission in accordance with official tender procedures. Experts may only be replaced in accordance with those procedures.
- 4.2. Experts shall be appointed for a period of one year, renewable for a further two years, and shall be required to sign expert contracts with the Commission.
- 4.3. Experts may withdraw from the expert panel by terminating the contract with the Commission after having served 30 days formal notice. Similarly the Commission may terminate a contract with an expert after having served 30 days formal notice. Experts may only be replaced further to a renewed call for application, the timing of which shall be at the Commission's discretion.
- 4.4. Experts shall elect a chairman from among the group who will chair meetings and liaise with the Commission secretariat, as well as up to two vice chairmen. Both Chairmanship and vice chairmanship shall be renewed each year.
- 4.5. If necessary, the Forum may seek occasional expert advice on specific financial services issues from a qualified expert or experts. Such expert(s) may attend one or several Forum meetings and, subject to agreement by the Commission, may claim reimbursement of travel expenses. The number of reimbursements shall not exceed a total of four per year.

5. Duties of experts

- 5.1. Experts shall be expected to express independent opinions to the Commission and to ensure that there is no conflict of interests between the work they undertake in the context of the Forum and the posts they occupy.
- 5.2. Experts shall be expected to observe the confidentiality of the information and documents brought to their attention during the meetings or the consultation process, if required by the Commission. Confidential information shall not be disseminated outside the Forum.
- 5.3. Experts shall be required to attend and participate actively in between 4 and 6 meetings per year in Brussels, and shall be

expected to carry out the necessary background work outside these meetings.

6. Tasks of the Commission

- 6.1. The Commission shall provide the secretariat of the forum, convene meetings, prepare draft agendas in agreement with the Chairman, arrange meeting facilities, reimburse travel expenses, liaise with contracted experts and prepare minutes of the meetings.
- 6.2. The Commission shall provide briefings and documentation on initiatives for which the Forum's view is sought.
- 6.3. The Commission shall launch the necessary procedures regarding any studies to be carried out in the context of the *FIN-USE* forum and manage the subsequent contracts (see point 7).

7. Consultation of the Forum

- 7.1. The Commission shall consult the Forum, at the earliest stage possible, about important initiatives, in particular of a legislative nature affecting users of financial services.
- 7.2. The Commission secretariat shall be responsible for submitting requests from the Commission. This shall be done in agreement with the Forum's Chairman.
- 7.3. The Forum, via the Chairman, may request to be consulted on issues which have not been submitted to it by the Commission.

8. Access to supplementary research

- 8.1. The Forum may request the Commission secretariat to take the necessary measures in order to commission research in a given area, with a view to supporting *FIN-USE* opinions.
- 8.2. The decision on whether or not to fulfil the Forum's request shall be left to the Commission's own discretion.

9. Transparency

- 9.1. Documents and research resulting from the Forum's work shall be made available to the public.

The Commission shall be the sole owner of the outputs of *FIN-USE*, including copyright and other intellectual property right. Experts

shall not be entitled to make any use or publication of these outputs without prior permission from the Commission.

APPENDIX C: EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS OF FIN-USE ON THE REPORTS ON BANKING, ASSET MANAGEMENT, SECURITIES AND INSURANCE OF THE POST FSAP STOCKTAKING GROUPS

EXECUTIVE SUMMARY

FIN-USE was set-up by the European Commission in 2004 as an expert forum to help it meet the pressing need to improve policy-making in the field of financial services by including a user perspective. As its first task, at the request of the Commission, *FIN-USE* has provided general and specific opinions on the Reports of four Expert Groups which were set up to review the integration of Europe's financial services markets, as the Financial Services Action Plan (FSAP) nears completion.

As a general comment, *FIN-USE* finds that the four Reports largely ignore concrete user concerns. This may be the result of the fact that the Expert Groups were composed almost entirely of staff from financial services providers. The four Reports imply that user interests are best protected by competition, by reductions in cross-border barriers created by national protective legislation, and by the prioritisation of self-regulation over binding regulation. They support a new principle of *supplier* home country control in contract law and largely welcome the Lamfalussy Process and its results to date.

FIN-USE disagrees with such assertions. *FIN-USE* would prefer an approach based instead on the principle of diversity in consumer protection and in the range of available suppliers and products. *FIN-USE* favours *consumer* home country control, is sceptical about self-regulation and would wish to see greater user involvement in the Lamfalussy processes. *FIN-USE* would wish to stress that consumer and small business protection creates confidence. User problems such as exclusion, predatory lending, overindebtedness, excessive payment fees, and fraud in the security markets need to be addressed. *FIN-USE* also regrets the limited references in the Reports to corporate governance.

However *FIN-USE* does support the Reports' general call for evidence-based policy formulation.

In the Banking Expert Group Report, *FIN-USE* believes that there should be more analysis of the impact of regulation on user interests (e.g. how appropriate are products for specific user needs,

clear information, access to finance for SME's, etc.). *FIN-USE* also notes the urgent need to instil consumer confidence in cross-border financial services.

While the Asset Management Expert Group Report espouses the consideration of user interests in future developments, *FIN-USE* regrets that no concrete steps are proposed, nor does the Report develop specific recommendations on improved corporate governance and investor protection, despite highlighting the importance of the matter.

The Securities Expert Group Report makes repeated references to the existence of bad legislation and the risk of over-regulation, and, like the other reports, supports self-regulation. In response, *FIN-USE* counters that ensuring investor confidence in the correct operation of the market is fundamental to market development. *FIN-USE* regrets that this Report also remains silent on the lessons to be learned from recent financial scandals, and finds that the Report demonstrates limited vision with regard to the role of transparency in the regulatory process.

The Insurance Expert Group Report fails, in *FIN-USE*'s opinion, to deal coherently with the real differences between the protection and investment insurance markets. It also ignores ethical concerns ranging from gender discrimination to genetic testing, where there has been no real user involvement in the debate to date. In particular, *FIN-USE* regrets the omission from the Report of the need for insurance protection schemes.

FIN-USE has formulated the following 10 key recommendations as a general response to the expert group reports:

Key Recommendations of *FIN-USE*

1. Consumer confidence in the financial services industry is the key pre-condition for building a successful single market. National consumer protection systems are a vital component, not an obstacle to an Internal Market. *FIN-USE* welcomes larger markets so long as they serve user interests.
2. *FIN-USE* strongly recommends effective involvement and representation of the user perspective at all levels of policy making including the Commission, the Lamfalussy committees as well as national regulators.
3. *FIN-USE* supports evidenced-based policy making – however there is little evidence available about problems faced by users in today's markets – this is a gap which needs to be filled.

4. The complexity of products and information asymmetry leads to a need for intermediary services and good advice. However product providers tend to focus on the control of these intermediary distribution channels, which results in high commissions to intermediaries, high charges to consumers and a lack of transparency. *FIN-USE* believes that these problems need to be addressed when building a single market, including the promotion of transparent information and ensuring that independent advice is available.
5. *FIN-USE* urges the Commission to guard against the danger that increased competition in the single market and the pressure from risk based prudential rules will lead to cherry-picking of the most attractive customers and financial exclusion of other customers.
6. *FIN-USE* is sceptical of the advantages for users of self regulation by the industry, particularly at EU level.
7. *FIN-USE* recommends that consumer and small business protection regulation should as far as possible be based on user home country control, within a system that inclines to minimum harmonisation.
8. In order to drive competition, *FIN-USE* believes that users must be free to change suppliers easily, rather than having to overcome considerable hurdles as is the case today.
9. *FIN-USE* believes that Corporate Governance should have a key role to play in protecting all stakeholders – not just shareholders – in the financial sector.
10. *FIN-USE* regrets that the reports have not addressed:
 - The conditions in the new Member States following enlargement;
 - The high cost and problems faced by users in making cross-border payments;
 - The absence of any EU obligation to establish compensation regimes when insurers and pension providers fail;
 - Overindebtedness and disadvantaged groups.

APPENDIX D: EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS OF FIN-USE ON THE NEW LEGAL FRAMEWORK FOR PAYMENTS IN THE INTERNAL MARKET

Executive Summary

FIN-USE was set-up by the European Commission in 2004 as an expert forum to help it meet the pressing need to improve policy-making in the field of financial services by including a user perspective. At the request of the Commission, *FIN-USE* has provided an opinion on the current Working Document on a "New Legal Framework for Payments in the Internal Market" (Version 5.0 of 28th November 2004).

In general *FIN-USE* supports the objectives of the proposed directives, namely

- the harmonisation of market access conditions to enhance competition between payment service providers and to bring forward innovative products and more choice for the users,
- the development of pan-European applications,
- fostering the creation of the necessary infrastructure for a fully integrated European payment market,
- removing the confusing co-existence of three community legal acts and to modernise and simplify the regulatory framework, and last but not least,
- creating a consistent level of consumer protection and improved transparency.

The last objective is from the *FIN-USE* point of view the most important as the free movement of goods and services can only function properly if users have access to cheap, efficient and secure payment services. Thus a high, common level of consumer protection is needed to encourage users to shop across the Internal Market and to stimulate competition between providers. The reality looks different: cross-border business-to consumer sales have stagnated in the EU since 1991 according to a speech of Commissioner David Byrne of June 2003.

Whereas the Commission equates consumer protection with lowering the fees and charges and making them more transparent (see Draft Explanatory Memorandum) *FIN-USE* believes that there is more to it than just tackling fees and transparency.

Secure, convenient, cheap and efficient cross-border payments are a key issue to a common market as one of the main objectives is to remove barriers to the free movement of goods and services. Thus

a coherent and comprehensive modern legal framework for retail payments in the Internal Market is badly needed. Consumers need to draw benefits from the achievements of a Single Payment Area.

In this respect security and its evaluation, consumer rights (e.g. for refund or consequential damage), sanctions when breaking the rules and comparability of information are key issues where improvements are necessary.

Up to now there are still a number of impediments that prevent markets from being transparent, secure, efficient and cross-border-friendly. *FIN-USE* therefore welcomes the New Legal Framework (NLF) and its objective to modernise and harmonise the regulatory framework applying to retail payment services.

FIN-USE acknowledges the fact that the Regulation on cross-border payments in euro has contributed to reducing the price of many, but not all cross-border payments within the Internal Market. *FIN-USE* is however concerned by reports and cases that some banks are not complying correctly with the regulation or – as a circumvention of the regulation – have raised – as is the case in Germany and Austria - national prices substantially with effects on cross-border prices. *FIN-USE* therefore reminds the Commission of its obligations to submit a report on the application of the Regulation no later than 1 July 2004.

FIN-USE supports the principle of a 'high, common level of consumer protection' which is an overriding Treaty objective. Thus the NLF should be consistent with the European Consumer Policy Strategy which sets its achievement as a key objective. In this respect the wording in the Draft Explanatory Memorandum that a 'consistent level of consumer protection and improved transparency' is needed is not sufficient - the more so as the maximum harmonisation approach has been chosen. National laws partly go beyond the draft proposal and furthermore purely national payments will form the mass of all transactions in the medium term. Finally the level-playing-field and enhanced competition between payment service providers' – favoured by the Commission – has to arise on the basis of a uniformly very high consumer protection level. Consumers will only be encouraged to choose between competing payment services in different Member States if they can be assured of a high, common level of protection which is not yet reached by the draft proposal, as will be shown below. The improvement of cross-border payment systems should not carry any negative consequences for existing, efficient national payment systems.

FIN-USE would support the harmonising approach of the draft but only if it is maximum harmonisation at the highest level of consumer protection and empowerment. If this cannot be guaranteed *FIN-USE* would prefer a high, minimum level of harmonisation that would allow Member States to establish individually higher standards of protection.

The draft proposal contains several important approaches, yet experiences in national consumer protection as well as the importance and scope of this proposal should be considered important enough to promote even higher standards in transparency and information, security and liability than has so far been the case. The proposal is also disappointing because of the detrimental impact of mutual recognition on consumer protection and confidence.

Furthermore, a number of important issues have not been addressed: the joint and several liability, the convergence at a high level of security standards (e.g. cards, terminals) to strengthen consumer confidence and reduce their liability risks, non resident accounts, customer mobility and the access to banking services, especially bank accounts.

Key Recommendations of FIN-USE

1. *FIN-USE* welcomes the New Legal Framework and its stated objectives of modernising, simplifying European payments legislation and fostering the creation of the necessary infrastructure for a fully integrated European payment market, but in no case at the expense of confidence of all market participants (consumers, SMEs, trade).
2. Consumer confidence concerning consumer payment services including security, transparency, consumer rights, sanctions against providers and access to banking services is the key pre-condition for building a successful single market in favour of consumers. Competition and consumer rights including transparency are two sides of the same coin.
3. *FIN-USE* welcomes
 - a. the directive applying to consumers and SMEs,
 - b. the directive applying to transactions up to 50.000 €,
 - c. the responsibility of one payment service provider,
 - d. the ceiling of 150 € for liability of the consumer (from the user's point of view there must however be

exceptions to this rule, and not only in the clear case of fraud against him)

- e. the deletion of double charging
4. Maximum harmonisation could have been one option for harmonising consumer protection (at the highest possible level), for ensuring a level playing field for payment service providers, providing high legal certainty, strengthening consumer confidence and ending the divergence of national legal provisions. But as the level of consumer protection is too low in the draft proposal - as illustrated shown in this report - minimum harmonisation at the moment is the only option unless the Commission succeeds in raising the level of protection substantially.
 5. With mutual recognition there would be a 'race to the bottom' in terms of consumer protection standards going beyond the harmonised level. Herein a breach of the Rome Convention is implied that asks for the application of the consumer's law and court of jurisdiction.
 6. Concerning information
 - a. early availability,
 - b. comparability (by means of a standardised-information-sheet) and the
 - c. justification of unilateral changes of exchange or interest rates with an objective reason and in a transparent wayare not included and must be ensured.
 7. Refund should be made possible in all cases where either the authorisation did not cover the exact or intended amount of the payment or the authorisation did not include the exact or intended payee. It is not acceptable that the financial consequences deriving from the risky behaviour of a provider (e.g. paying a merchant on the basis of the mere communication of the card data without undertaking any verification) are shifted to the consumer.
 8. Concerning execution times and value dating there have to be improvements in duration and transparency. The aim of bringing down execution times will fail as higher limits can be agreed upon by standard contract terms.
 9. Although the maximum harmonisation approach has been chosen, some aspects such as sanctions and consequential damage that are vital for consumers are not considered but completely left to the Member States. There have to be effective sanctions as well as a liability for consequential

damage in all Member States. The current provisions will not lead to the promotion of a common market: providers will look from where they can best do their business, and competition is not fostered because of the different financial risks for providers in the different Member States.

10. *FIN-USE* recommends a higher level of protection concerning the consumer's liability as regards unauthorised or disputed payment transactions:
 - a. It is unrealistic to always expect consumers to be in a position to provide factual information for not having acted negligently. In these cases there must not be a prima-facie evidence at their expense.
 - b. In a clear case of fraud against the consumer he should not have to bear a loss of 150 € (one could even go further and extend this exception to liability on cases where a consumer's liability would be absolutely inequitable).
 - c. The definition of gross negligence should be clarified, especially by examples. Only those measures are to be taken by the consumer that can legitimately be expected of him, taking into account the human nature and the category of consumers concerned (elderly people etc.).
11. One of the most consumer-unfriendly provisions in the draft directive is the way credit-granting institutions are handled. As credit business in connection with payment services is listed in the Annex, they are not treated as credit institutions, but only fall under the scope and obligations of the Payments Directive.
12. Unfortunately, no independent official evaluation of security is foreseen at the moment. It is vital that this issue be addressed not only from a user perspective, but to ensure confidence in the whole payment system.
13. A number of topics are missing in the draft directive:
 - a. non-resident accounts
 - b. access to bank accounts and basic banking services
 - c. customer mobility
 - d. joint liability
 - e. scope (the situation in France – frequent use of cheques - is not dealt with). In this case a study of the economic impact would be very important.