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**WORKING DOCUMENT OF DG INTERNAL MARKET SERVICES**

**REVIEW OF FINANCIAL SERVICES ACTION PLAN:  
PUBLICATION OF REPORTS OF FOUR INDEPENDENT EXPERT GROUPS  
FOR COMMENT**

**7<sup>th</sup> MAY 2004**

## I. CONTEXT OF FSAP REVIEW

In terms of delivery of legislative measures to schedule, the Financial Services Action Plan<sup>1</sup> has been a resounding success. 39 of the 42 identified measures have already been agreed. This list includes very significant enhancements of the EU framework of financial legislation. Landmark developments include a package of measures to establish a harmonised financial disclosure regime for issuers of listed securities; a regulatory framework for the trading of financial instruments which encompasses clear and strict rules on policing market abuse; agreement on a European Company Statute and other measures to facilitate cross-border corporate restructuring; and the introduction of a first set of provisions governing the management and operation of occupational employment pension schemes.

The success of the FSAP is not limited to the timely delivery of legislative proposals. The FSAP has also witnessed a ‘culture’ change in EU financial rule-making. A new cooperative dynamic between the Commission, Council and European Parliament has paved the way for consensus on sound regulatory solutions within reasonable time-frames. Recent agreement in European Parliament<sup>2</sup> and Council on the Financial Instruments Markets Directive and Transparency Directive are testimony to this powerful political commitment to exploit the wealth-creating potential of European financial integration.

The FSAP has also seen the bedding down of enlightened new approaches to promulgating EU financial legislation as advocated by the Lamfalussy Committee of Wise Men for securities Markets<sup>3</sup>. The development of EU financial law is now a shared enterprise; steered by the Commission; building on technical guidance from supervisory authorities and with every opportunity for market participants to shape outcomes. The format of EU financial rules is also evolving – away from overly prescriptive drafting in EU legislation towards principles-based framework legislation complemented by detailed implementing measures. This approach squares the circle between the legal certainty needed to ensure effective market access and the need to update the nuts and bolts of financial regulation in the light of market innovation. By co-opting national supervisory authorities into the process of EU rule-making and enhancing pan-European regulatory cooperation, this approach has better equipped the EU to meet the challenge of ensuring the effective implementation and enforcement of the new FSAP rules. The advantages of this approach, as pioneered in the securities field, have encouraged the Council and Parliament to extend it to banking, insurance and UCITS<sup>4</sup>.

In contrast to its obvious legislative and institutional legacy, the jury is still out on whether the FSAP is significantly improving cross-border commercial opportunities for financial institutions and investors. The Commission’s “financial integration monitor” report, which is published alongside the four expert group reports<sup>5</sup>, provides a first comprehensive body of empirical material describing changes in the level of cross-border integration in key financial segments over recent years. It records some increase in the integration of financial markets and of upstream value-chain functions, corroborating qualitative feedback from the expert groups. The financial integration monitor also describes developments in terms of competition, efficiency and the

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<sup>1</sup> Financial Services Action Plan : COM (99) 232 of 11.05.1999.

<sup>2</sup> The European Parliament voted on 30.03.04 to endorse texts of these two important proposals. On the basis of these Parliament positions, it should prove possible to move quickly to final adoption.

<sup>3</sup> Final report of the Committee of Wise Men on the Regulation of European Securities Markets, Brussels 15.02.2001.

<sup>4</sup> The European Parliament has recently endorsed a recommendation to extend arrangements for the adoption of detailed implementing measures, already applicable to securities, to banking, insurance and UCITS.

<sup>5</sup> Available at [http://europa.eu.int/comm/internal\\_market/en/finances/cross-sector/index.htm#tracking](http://europa.eu.int/comm/internal_market/en/finances/cross-sector/index.htm#tracking).

intensity of cross-border risk transmission channels. However, it remains difficult to determine the extent to which ongoing changes in the EU legislative framework – as opposed to other significant structural developments such as the introduction of the euro, cyclical factors or technology – have contributed to these outcomes. What is certain is that many market operators now have European horizons when planning their business strategies.

The final impact of the FSAP will depend in large part on the success of the Commission and the newly constituted networks of regulators and supervisors in ensuring that the new rules of the game are implemented and enforced consistently across the EU. The importance of the project and its centrality to the overall Lisbon economic reform process, require us to ensure that the high expectations of the FSAP are fully realised. Therefore, as the legislative phase of the FSAP draws to a close, the Commission believes that it is timely to start a dialogue with all stakeholders on the strengths and weaknesses of the EU framework of financial legislation as it is emerging from the FSAP. The purpose of the current review is to determine how to get the best out of this framework faced with financial markets which continue to evolve – notably under the effects of enlargement.

## **II. THE FSAP REVIEW PROCESS**

The first step in this process was the constitution in October 2003 of four expert groups to prepare reports on the state of financial integration following the FSAP in the banking, insurance, securities and asset management sectors. These reports have now been finalised and are being made public as the basis for comment by all interested parties. These reports reflect the consensus view of the group members. The publication of these reports by the Commission services should not be construed as endorsement by or agreement of the Commission or its services of any of the views contained in these reports. The Commission and its services will not, at this stage, adopt a formal position in respect of the issues emerging from the expert group reports.

The second stage of the process is a period of consultation and open exchange of views with all interested parties and stakeholders on these reports. The deadline for written comments on the analysis and recommendations contained in the four reports is 10th September 2004.

In a third stage, the Commission services will analyse the feedback received and publish a document synthesising the key considerations emerging from responses to the expert group reports. This synthesis of responses will be published shortly thereafter. Commission services will submit their assessment on these issues for consideration by the new College of Commissioners early in its mandate. In developing its position, the Commission will take account not only of the four reports and the reactions to them, but also of other relevant contributions to or statements on the state of European financial integration. It is premature at this stage – before the debate on key policy issues and priorities has begun - to predict the content, nature or status (Green Paper, White Paper) of any eventual Commission position.

This dialogue forms one important part of a wider reflection on future directions of EU policy in this area. Other notable developments include the ongoing preparation of a report on financial integration by the EU Financial Services Committee for consideration by EU Finance Ministers on 2<sup>nd</sup> June 2004. The heightened interest in the progress of European financial integration reflects a greater awareness of the strategic importance of an integrated, dynamic and competitive financial marketplace in supporting investment-led growth and job-creation. Getting the legislative framework right is a crucial part of the equation. A soundly-regulated, competitive single financial marketplace is the best guarantee that European financial institutions and firms can prosper in rapidly globalising financial markets. It is a crucial step towards the delivery of sound and innovative financial services which meet the needs of European investors and consumers.

### **III. COMPOSITION AND MANDATE OF EXPERT GROUPS**

The expert groups were mandated to assess progress made under the FSAP in removing regulatory/legal barriers to the provision of services, to the performance of financial transactions and to the organisation of business on a cross-border basis. In particular, the groups were asked to provide a systematic and comprehensive understanding of:

- (1) the extent to which the EU framework of financial legislation has removed regulatory, supervisory, administrative or other public policy impediments to organising activities or business functions on a pan-European basis;
- (2) ways in which the European legislative and supervisory framework could be further enhanced to ensure that FSAP measures delivered their intended effects in ensuring effective market access, and cost-effective protection of public policy goods such as market integrity and investor confidence;
- (3) any additional regulatory or public policy barriers which materially hamper the organisation of financial segments or business functions on a pan-European basis.

The composition of the groups was carefully crafted to cover all main business lines, category of institution, to ensure geographical balance - including knowledge of the new Member State markets - and to get input from both service providers and investors/market-users. In particular, representatives of consumers and shareholder organisations were invited to participate in each of the expert groups. Due to the relative paucity of authoritative expertise on the consumer/shareholder side of the market, composition of the groups was weighted towards professional market participants. One of the key objectives of the consultation process is therefore to validate the assessment of the expert groups against the views of other stakeholders – consumers, investors, issuers and regulatory and supervisory authorities. The Commission services are taking particular steps to mobilise an end-user perspective to the debate through its recently-established FIN-USE network. FIN-USE comprises twelve financial services experts, charged with formulating policy recommendations to the Commission on EU financial services initiatives on problems encountered by users (retail consumers and small and medium-sized businesses).<sup>6</sup>

The Commission services were privileged to be able to draw on the expertise and insights of over 90 high-calibre experts for the purposes of this review. A list of group members is annexed to each of the reports. Group members included key decision-makers, compliance officers and operational staff from companies who deal, on a daily basis, with the legal and administrative complexity of doing financial business cross-border. The Commission services are very grateful to all the group members and their organisations for making their expertise available for the purposes of the present review.

### **IV. THE EXPERT GROUP REPORTS**

The groups have now completed their reports. The executive summaries of the 4 reports are annexed to this working document. The reports in their entirety can be down-loaded (in EN only) from [http://europa.eu.int/comm/internal\\_market/en/finances/actionplan/stocktaking.htm](http://europa.eu.int/comm/internal_market/en/finances/actionplan/stocktaking.htm).

The reports reflect the outcome of discussions within each group over the period November 2003-April 2004. During this period, each group met four times on the basis of an evolving draft of the

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<sup>6</sup> The FIN-USE network met for the first time on 2<sup>nd</sup> April. More information on FIN-USE is available at [http://europa.eu.int/comm/internal\\_market/finservices-retail/finuse\\_en.htm](http://europa.eu.int/comm/internal_market/finservices-retail/finuse_en.htm).

report. In the limited number of instances where points of view could not be reconciled, this is made clear in the body of the reports. The reports do not necessarily reflect the views of the organisations to which the group members belong.

The role of Commission staff in the groups was to facilitate discussions – by providing secretarial support in organising and hosting the meetings, and acting as the chronicler of group discussions. In this latter capacity, Commission staff faithfully stuck to their role of recording the main lines of discussion amongst group members. Consequently, the expert group reports represent a fair presentation of the views of their members and not of the Commission services. They should not therefore be construed as reflecting the views of the Commission or of its services.

The Commission services consider that the four reports provide a comprehensive assessment of the extent to which different aspects of financial business can be undertaken on a pan-European basis. They provide a clear statement of the main expectations and concerns of the different sectors regarding the implementation and enforcement of FSAP legislation; set out recommendations for harnessing the full potential of FSAP measures; identify specific areas where the single financial market can be further enhanced through a combination of self-regulation, supervisory cooperation and - in some limited cases – additional EU level policy intervention. These reports represent the point of departure for a productive and wide-ranging debate on how best to fully leverage the political investment in the FSAP.

## **V. REACTING TO THE REPORTS**

As indicated above, the Commission services now wish to submit the assessment and views of the expert groups to wider scrutiny and open debate before developing a basis for a formal position of the EU Commission.

Given the differences in perspective and content between the four reports, the Commission services consider it unproductive to limit the consultation process to a standard set of questions and answers. All comments and views on any issues arising from one or more of the expert group reports are welcome. The Commission also welcomes documentary or empirical material to substantiate submissions. The Commission services welcome any efforts to ensure that responses are as succinct as possible.

To the greatest extent possible, it would be helpful if respondents could try to structure their contributions in the following way:

- (1) comment on the general ambitions which the expert groups put forward as a vision for the further development of a single financial market;
- (2) comment on the assessment of the expert group(s) concerning the effectiveness of the current EU legislative framework and arrangements for supervisory cooperation in supporting the pan-European organisation of different business functions;
- (3) comment on the proposals of the expert group(s) regarding general principles and methodology for identifying and prioritising further EU level legislative or other policy actions, and improving the EU financial rule-making process;
- (4) comment on the analysis of the expert group(s) regarding the emphasis placed on improvements at the level of supervisory convergence and enforcement, and on practical proposals in this regard;

- (5) provide views on any specific issues identified by the expert group(s) as priorities for further attention by EU policy-makers. In this regard, respondents should:
- (a) indicate explicitly whether they agree with the issues identified by the expert group(s) and explain any divergences;
  - (b) indicate any additional issues which respondents believe should be given priority consideration;
  - (c) provide a relative order of prioritisation of areas for further attention;
  - (d) where matters need further attention, indicate the appropriate form (regulatory, self-regulatory, supervisory cooperation) of intervention and the actors who should take the lead.
- (6) Identify aspects of the assessment where the respondent diverges from the expert group report, or concerns which may have been overlooked or not given sufficient prominence.

Respondents should clearly identify the organisations or bodies that they represent, briefly describe their main areas of activity, and clearly specify which reports are being commented upon. Respondents commenting on several reports should clearly specify where remarks are addressed to specific points in individual reports.

**Important note to respondents: Submissions will be made public (on Internet) unless respondents explicitly state that they wish their submission to be treated as confidential.**

Comments on the four expert group reports should be transmitted before **10<sup>th</sup> September 2004.**

To facilitate the preparation, reception and processing of responses, the Commission services encourage respondents to make use of the IPM interactive survey facility when submitting their comments. Respondents are able to access this Internet survey tool through the relevant link at [http://europa.eu.int/comm/internal\\_market/en/finances/actionplan/stocktaking.htm](http://europa.eu.int/comm/internal_market/en/finances/actionplan/stocktaking.htm).

In special circumstances where the IPM tool is not adapted to the needs of users, responses may be communicated by post to:

**European Commission  
Directorate General for the Internal Market  
FSAP review (progress and prospects)  
Unit F1 (Financial Services Policy)  
Rue de la Loi 200  
BE - 1049 Brussels.**

Reactions or position papers can also be transmitted electronically to:

MARKT FSAP-REVIEW@cec.eu.int.

**Annex: Executive summaries of expert group reports.**

## SECURITIES EXPERT GROUP REPORT

### - EXECUTIVE SUMMARY -

**DISCLAIMER: the expert group report should not be construed as representing the views of the European Commission or any of its services:**

The Group recognises that Europe's securities markets are becoming more integrated, but considers it too early to judge the impact of the Financial Services Action Plan (FSAP), which contained a number of legislative measures affecting securities markets.

The main emphasis should now shift from introducing and agreeing legislation to implementation and enforcement and the correction of poor legislation.

Clearing and settlement should also be a future priority; and there is important work to be taken forward on risk-based capital and corporate governance.

The Group supports the objectives of the Lamfalussy process and its extension to banking and insurance. The Lamfalussy principles should be expanded and should form the explicit basis for regulation. The emphasis should now switch from speed to improving the quality of the output by improving the process. However, fast-track solutions will also be essential to remedy or repeal bad legislation.

The Group considers that regulation requires justification in order to avoid overregulation. Underlying policy-making must be evidence-based and subject to regulatory impact analysis. Effective coordination within the Commission, Council and the European Parliament is key to avoiding overlapping and conflicting rules.

Non-legislative solutions should be considered ahead of regulation. Competition policy also has a role in tackling remaining barriers.

Regulation must also take account of its impact on Europe's international competitiveness, both by ensuring that European firms can access international financial markets in an environment that represents a level playing field, as well as by recognising the needs of non-EU market participants carrying out business in Europe. The aim should be that Europe is the securities market of choice for issuers and investors worldwide.

The Group recognises the value of close international cooperation to achieve regulatory equivalence.

Innovation is essential for a vibrant financial market. Care must be taken so that the regulatory process does not inhibit innovation and its quick dissemination, whilst guarding against potential prudential risks that may result from new developments. It is essential that Level 1 texts are drafted as framework legislation that can accommodate innovation through timely adaptation at Level 2. Securitisation is a particularly good example of valuable financial market innovation. The Group considers that a more coordinated EU approach might better facilitate increased growth and competitiveness in the European segment of this vital market.

Transparency should be enhanced at all stages of the regulatory process. The Commission needs to draw a realistic work programme. CESR should be allocated sufficient time to provide advice to the Commission on implementing measures, so that industry professionals can provide effective input through consultation. All Member States should also consult market participants

on changes to laws and regulation at national level and publish information on implementation activity. The Council and the ESC should conduct all discussions relating to legislative measures in public.

The Group considers that enforcement needs to be improved, including of basic Treaty freedoms. Good implementation in the Member States is fundamental. In this context the Group endorses the role of CESR in securing even implementation. Good coordination within CESR (at Level 3) should also facilitate the identification of bad legislation that needs reform.

DG MARKET of the Commission should be allocated appropriate resources to fulfil its responsibilities relating to implementation and enforcement of financial markets regulation.

The Group considers that effective mechanisms must be established to deal with concerns from market participants. In particular, a European ombudsman should be established.

The Group believes that national supervisors should enhance cooperation to assist market participants engaging in cross-border activities. It is too early to consider establishing a single European supervisor. Priority should instead be given to developing and improving coordination of national supervisors through the Lamfalussy process. However, this issue may need to be considered in the future if cooperation between supervisors proves insufficient to foster a true single market for securities.

The Group emphasises the need to examine the regulatory challenge of real-time monitoring by trade execution venues in order to ensure orderly secondary markets.

Corporate governance codes across Europe show a high level of convergence. The Group considers that, at this time, there is no need for a single EU code, but common guidelines should be adopted at EU level, taking into account different methods and organisational models.

The principle of agreeing and using a set of universal accounting standards would greatly assist in making company accounts more reliable, transparent and comparable. It is important that the IASB takes into account the needs of all users of accounts and that the IASB consults effectively and assesses the economic impact of IAS standards.

The Group considers that the dissemination of disclosable corporate information needs to be fast and simultaneous throughout the EU.

The Group regrets that barriers remain to the setting up and running of companies on a cross-border basis. This includes those relating to taxation, in particular the application of VAT to intra-group transfers.

The group considers that a harmonised and strengthened regime for close-out netting in the event of a firm's default would improve the competitive position of European financial markets.

The Group notes that the role of credit rating agencies is being examined in a number of fora. It considers that credit rating agencies must be looked at in a global context and that any regulatory action must be proportionate and evidence-based.

## INSURANCE EXPERT GROUP REPORT

### - EXECUTIVE SUMMARY -

**DISCLAIMER: the expert group report should not be construed as representing the views of the European Commission or any of its services:**

The Insurance and Pensions Expert Group is committed to a vision of a European single market for insurance and pensions services that is diverse, open, efficient and competitive; where customers benefit from a wide choice of innovative products at competitive prices; provided by an EU insurance and pensions industry regulated in an effective and cost-efficient environment that does not undermine domestic operation and allows business the opportunity to achieve European scale and scope economies to reinforce its global competitiveness.

Insurance and pensions are major economic activities. Insurance premium represents almost 9% of EU GDP and assets managed by insurers and occupational pension funds are equivalent to over 75 % of EU GDP. The imminent Accession of 10 new Member States and the demographic challenge of an ageing population will lead to further growth. The EU market is slowly consolidating. 'Pan-European' groups, operating in two or more Member States, now have sizeable EU market share.

Further integration should provide significant benefits for customers, the industry and the wider EU economy. Notwithstanding the existing single passport system and the FSAP measures adopted, the business reality is that national markets remain fragmented. Cross-border competition is limited by a variety of market entry barriers, reducing consumer choice and hindering efficient business operation.

Limited market integration has taken place primarily through cross-border freedom of establishment (FOE) via acquisitions and holdings. Branching activity is relatively unimportant except for reinsurance. While beneficial, establishment based trade does not produce the full benefits of an integrated market. Furthermore, emerging pan-European groups cannot harness operating efficiencies because of the current legal and prudential framework. In particular, group supervision and supervisory reporting requirements under the Insurance Groups and Financial Conglomerates Directive need urgent remedy. Macro-crisis management at EU level and increasing overlaps of regulatory supervision at the global level need addressing.

The volume of cross-border retail business under freedom of services (FOS) is negligible. While the situation is more satisfactory for large (i.e. industrial) risks, efforts to promote the cross-border selling of mass (i.e. retail) risks have created disproportionate costs for domestic markets without achieving significant FOS sales. The nature of retail business is such that, for many lines of business, FOS sales will always remain relatively limited. At the customer level, language and culture differences, customer preferences and consumer protection rules act as entry barriers. At the supplier level, the need for local risk knowledge and a local claims service, business and distribution characteristics as well as abusive use of 'general good' rules, make cross-border selling difficult. Taxation presents a gamut of challenges. There is no unique legislative panacea that will create a genuine single market. While some barriers should be tackled by business-led initiatives and not by legislation, a variety of measures could help FOS sales emerge where there is a real market potential.

The Group has also examined issues for specific market participants. Industry customers experience problems caused by the growing number of compulsory national pools and the taxation of multi-national policies. Intermediaries could play an important role in promoting

FOS sales but rules in the Insurance Mediation Directive and the proposed Investment Services Directive need both some rationalisation and time to bed down. Mutuals, niche operators and their members could benefit from increased cross-border co-operation with a tailored legal framework. Pensions providers welcome the new 'Pensions' Directive. Local tax, labour and social security laws require local product delivery but integration benefits could be realised in the upstream value chain, e.g. asset and risk management. A 2-way 'knowledge gap' between EU pension professionals and the wider market needs to be narrowed. The position for reinsurance branches would be eased by the proposed reinsurance directive, but reinsurers suffer from the same group supervision problems as primary insurers.

The Group identified a series of horizontal principles that should be respected in the preparation and review of all EU legislation. The EU legislative framework should be the minimum necessary for all market operators to enjoy the freedoms of a single market. It should focus on efficiency and convergence to ensure business competitiveness for the benefit of customers and the wider economy.

The Group recommends that the following actions be taken to improve the functioning of the single market in insurance and pensions :

- Complete the FSAP including Solvency II, reinsurance and satisfactory international accounting standards- but in Solvency II a balance needs to be maintained between the absolute level of capital required, the cost implications for insurance customers and the competitive impact on the European insurance sector;
- Hold a regulatory pause to consolidate legislation. This would also be beneficial in the context of enlargement;
- Focus on the convergent implementation and effective enforcement of EU legislation. This goal will be facilitated by the correct application of the 'Lamfalussy' process, enhanced by due industry consultation and a new mechanism to speed up the resolution of disputes;
- Streamline current supervision, especially for groups ,conglomerates and pan-European players and remove barriers (such as VAT on inter group services) that hamper companies developing a genuine European 'shared services' model ;
- Make existing FSAP and other EU-insurance, related legislation more coherent, and simple where possible;
- Simplify and clarify identified tax issues;
- Foster the organic development of a single market by:
  - studying the development of a 26<sup>th</sup> regime;
  - encouraging business to develop pan-European products;
  - adopting the statutes for a European mutual society;
  - addressing those product/customer segments where the cross border business model is most likely to succeed in the short term (e.g. SME sector, expatriates, consumers with properties in more than one Member State, simple life products)

In relation to the adoption of new, as well as the review of existing, EU legislation, the Group stresses that the following principles be rigorously respected:

- Consult widely and in a timely fashion with industry and other stakeholders;
- Adopt a flexible and targeted approach to EU initiatives and legislation:
  - Use non-legislative measures where possible (e.g. self-regulation, codes of conduct, ombudsman, etc. );
  - Resort to legislation only where necessary;
  - Develop a variable legislative approach, e.g. mutual recognition, where possible and harmonisation, only if essential;
- Prioritise any EU policy initiative by rigorous evidence-based justification and quantitative cost-benefit analysis, where feasible ;
- Test the impact of any proposed measure on wider business competitiveness for both proprietary companies and mutuals;

Seek to create a real single market by reducing or eliminating unnecessary host country rules and options that act as barriers to cross-border business.

## **BANKING EXPERT GROUP REPORT**

### **- EXECUTIVE SUMMARY -**

**DISCLAIMER: the expert group report should not be construed as representing the views of the European Commission or any of its services:**

#### **STOCK-TAKING**

The integration of the EU banking sector has increased, albeit mainly in the wholesale sector. The retail markets have remained essentially national/ local. Direct cross-border provision of retail banking services is still limited, although internet banking is gaining wider public acceptance.

Restructuring has continued, with the emergence of financial conglomerates, and of a few cross-border banking groups at regional level. National champions however remain the dominant model.

The financial performance of the EU banking sector has continuously improved in this dynamic environment, where competition between players has markedly increased.

#### **IMPROVING THE PROCESS**

The consistent implementation of the FSAP-acquis is a precondition to further integration and for level playing fields in the EU-25. Implementation and enforcement of existing FSAP measures should receive priority attention.

Future EU initiatives will need to be targeted at specific segments of the banking markets and must be justified by the net benefits they will bring to financial services providers and to their customers. The Commission should consult up-front and extensively with all interested parties, as was done for the review of capital adequacy rules.

The range of instruments to foster integration should be expanded, with a wider use of self regulation where appropriate and proportionate.

#### **IMPROVING THE ENVIRONMENT**

The future capital adequacy legislation involves an urgent need to improve and enhance coordination between the supervisors of cross-border banking groups. Legislation should establish a “lead supervisor” with wide ranging powers to ensure an effective and rational application of prudential requirements at each cross-border banking group.

Further integration depends on convergence in the interpretation and the daily application of the banking legislation. The Commission and the newly-established Committee of European Banking Supervisors will have a key role to play.

Competition is also a driving force for integration and needs to be encouraged by removing unjustified or unreasonable obstacles to market entry. This could be achieved by combining a variety of means, from pursuing targeted harmonisation to promoting mutual recognition more vigorously. This should however respect the diversity between the providers of banking services in the EU, which appears beneficial to consumers.

## **A VALUE CHAIN APPROACH**

Future EU-policy should consider the different elements of the “value-chain”, from back office functions to delivery to the end-user. Improvements in the infrastructure for payment and settlements, a rationalisation of reporting requirements, and a less punitive application of VAT on outsourcing are key conditions for a further integration of “upstream” functions in “centres of excellence” that will provide horizontal services to different parts of EU banking groups.

As regards “downstream” functions, the removal of policy-induced obstacles to integration –such as discriminatory tax treatments, different legal frameworks for collateral, would facilitate the cross-border delivery of competitive banking services.

The differences between the different rules for consumer protection across the EU also have a dampening effect on cross-border integration. Consumer confidence is paramount, and the integration strategy for retail markets should be supported by confidence building measures that ensure the protection of consumer in an open market.

## - ASSET MANAGEMENT EXPERT REPORT -

### - EXECUTIVE SUMMARY -

**DISCLAIMER: the expert group report should not be construed as representing the views of the European Commission or any of its services:**

The European asset management industry manages over €10 trillion of assets – roughly the size of EU-15 GDP! This industry plays a vital macroeconomic role in Europe’s economy. It contributes to fostering financial independence during working life-time and to sustaining a high quality of life also during retirement for the European citizens. The asset management industry is also a driver of integrity and efficiency in European financial markets. The asset management working group therefore welcomes the increased recognition given by European policy-makers to this fast growing industry, as a distinct and strategically important pillar of the European financial landscape.

The investment fund industry is a high-growth sector with significant untapped potential for further expansion. However, the current level of fragmentation, as reflected in limited cross-border distribution and cross-border flows, together with a sub-optimal scale of operation, still hinder the industry from playing its full part, despite of the success of existing legislation. As a result, European investment funds are more costly for European investors than necessary.

The asset management business is very heterogeneous. This is reflected in different commercial strategies and business objectives. However, there are core functions which are common to the asset management business. These include, inter alia, the process of investment management, the constitution of products and all functions which are related to the industry’s responsibility to investors and/or beneficiaries including distribution. The group recommends that public authorities should ensure that these functions are subject to broadly equivalent regulation. The group emphasised that regulatory arrangements should be flexible enough to encourage a high degree of innovation and to permit different business models to thrive in an open and competitive marketplace.

The group considered that the efficiency of key support functions to asset management, such as depositary and custody functions, fund accounting and transfer agency, is essential to the continued success of the industry.

The crucial first step towards delivering a genuine single market for asset management in Europe is the correct and even implementation of the relevant FSAP measures. Supervisory convergence and cooperation should deliver consistent enforcement and the legal certainty needed to support effective market access.

It is also essential to maintain and enhance high standards of investor protection and transparency to promote both the quality of products and services as well as confidence in the buying public. The group recalls that the interests of investors are always paramount. High levels of investor protection are central to the continued success and development of the asset management industry – and a full commitment to investor protection is a condition for cross-border access.

Concerning the key improvements that the asset management needs to organise its business on a cross-border basis, the group identified the following priority issues: simplified fund registration; facilitation of cross-border fund mergers; recognition of asset pooling techniques and structures; a review of the scope of the management companies’ passport, free choice of depositary and fund

administrator, removal of unnecessary differences between operating protocols, particularly regarding cross-border fund processing. There is a need for ongoing vigilance to ensure that discriminatory tax barriers do not undermine single market freedoms. Transparency, effective disclosure and high quality advice are needed to allow consumers to make informed investment choices to ensure that they are offered the best products.

The group considered that a flexible, principle-based approach offers the best prospects for an appropriate EU-level framework for alternative investment vehicles including hedge funds, private equity/venture capital, real estate and commodities funds. Taking into account the different level of sophistication of investors, this should alternatively or additionally be flanked by the harmonisation of private placement rules including a clear and uniform definition of private placement.

The group considers that the EU-pension fund Directive (2003/41/EC) opens new doors for the cross-border pension fund business. The group recalls that this Directive foresees a review of whether the right to provide occupational pensions should be extended to other types of financial institutions capable of offering occupational pension schemes.

The group considers it essential to work closely together with the Commission and CESR to bring about the most important enhancements in the EU framework. In particular, as regards corporate governance, the group believes that the industry should take the lead in developing high level principles on governance and the prevention of conflicts of interest, and ensure that they are applied rigorously. This should be done in close cooperation with the Commission and CESR. However, the group recognises that regulatory intervention will inevitably follow should the self-regulatory approach not live up to expectations.

The group discussed the need for further legislation to enhance a single market for asset management, taking into account the inherent driving power of market forces. One way forward would be to build on the possibilities offered by the existing legal framework. This approach would privilege effective enforcement and implementation of existing provisions. Another way forward could be to modify the existing regulation so as to create a stand-alone pillar for asset management within EU-legislative framework. In this context, consideration could be given to a consistent and coherent approach encompassing collective and individual portfolio management, to a comprehensive asset management framework covering all functions related to asset management – regardless of the product or the service provider. In any case, any further regulation in this field should implement the Lamfalussy approach, - i.e., framework principles agreed by co-decision coupled with detailed technical implementing measures agreed at level 2 and cooperation of regulators at level 3. Effective action to boost the efficiency and competitiveness of the European asset management industry will be a powerful contribution to economic reform.