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COMMISSION STAFF WORKING DOCUMENT

**THE APPLICATION OF THE LAMFALUSSY PROCESS TO EU SECURITIES
MARKETS LEGISLATION**

A preliminary assessment by the Commission services

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This working document prepared by the staff of the European Commission has been prepared in view of the discussion in the ECOFIN Council of the review of the Lamfalussy process called for in the Resolution of the Stockholm European Council of 23 March 2001. This document does not necessarily reflect the final views of the European Commission.

The Commission services would welcome comments on this document from interested parties. Such comments should be sent by **31 January 2005** either by e-mail to:

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I. INTRODUCTION

1. The Stockholm European Council Resolution of 23 March 2001¹ on “more effective securities market regulation” calls for “a full and open review in 2004” of the “new regulatory structure” – the **Lamfalussy process**. The Lamfalussy process is based around the four-level regulatory approach² recommended by the Committee of Wise Men on the Regulation of European Securities Markets, chaired by Baron Alexandre Lamfalussy³.
2. The review of the Lamfalussy arrangements will involve all three Institutions. This document represents the views of the Commission services. The Council (Economic and Finance Ministers) will agree conclusions on 16 November. The European Parliament will discuss the Lamfalussy arrangements in the context of an own-initiative report on the current state of integration of EU financial markets, which Ms Ieke van den Burg, the Rapporteur, will present to the European Parliament’s Economic and Monetary Affairs (ECON) Committee on 22 November.
3. The Commission services consider that the review must also take into account the reports of the Inter-institutional Monitoring Group, along with the views of the Committee of European Securities Regulators (CESR) and its counterparts in banking and insurance – and external stakeholders.

II. HOW THE LAMFALUSSY PROCESS HAS BEEN PUT INTO EFFECT

4. The Lamfalussy process was designed to make Community legislation on securities markets more flexible, so that it can be agreed and adapted more quickly in response to innovation and technological change in financial markets; to allow the Institutions to benefit from the technical and regulatory expertise of European securities regulators and from better involvement of external stakeholders; and to focus more on even implementation and enforcement of Community law in the Member States.
5. Any evaluation of the Lamfalussy process must measure progress against these objectives, which are the starting point for the Commission services’ preliminary assessment in this document. The Commission services recognise that there has not been uniform progress against all of these objectives. For example, it is difficult to evaluate progress on implementation and enforcement at this stage. Accordingly, this document considers some practical suggestions to improve the working arrangements of the process.
6. One of the key innovations of the Lamfalussy process is the creation of two Committees to advise the Commission on Level 2 implementing measures – the

¹ The full text of the Resolution of the Stockholm European Council can be viewed at: http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/00100-r1.%20ann-r1.en1.html

² See Annex 1 for an explanation of the four-level regulatory approach.

³ 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

European Securities Committee (ESC) representing the Member States and functioning as a so-called ‘regulatory committee’ under the Comitology arrangements⁴ – and the **Committee of European Securities Regulators (CESR)**. The two Committees were set up by Decisions of the Commission on 6 June 2001⁵. The ESC acts in its capacity as a regulatory committee, assisting the Commission in the exercise of its delegated executive powers, within the terms defined in the Directives adopted at Level 1⁶.

7. **Transparency** is another important feature of the process. The Lamfalussy process has established a rigorous mechanism whereby the Commission seeks, *ex-ante*, the views of market participants and end-users (companies, investors and consumers) by way of early, broad and systematic consultation, with particular regard to Level 1 proposals, but also at Level 2. The Commission and CESR have both sought to deliver the highest possible level of openness and transparency, within the constraints of the timetable for the Financial Services Action Plan determined by the European Council⁷.

The Institutional framework

8. The Institutional context is also crucial to the success of the Lamfalussy process. **The Commission has fully respected the commitments it made to the other Institutions.** The detailed commitments, set out in Commissioner Bolkestein’s letter of 2 October 2001 to Mrs Randzio-Plath⁸ and confirmed in the solemn declaration by President Prodi to the European Parliament in Strasbourg on 5 February 2002⁹, have been adhered to:

- The Commission has kept the European Parliament fully informed in advance of all legislative and regulatory initiatives relating to securities markets and regular information meetings have been held between the Commission and the Parliament;

⁴ See Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ L 184, 17.7.1999, p. 23.

⁵ See Commission Decision of 6 June 2001 establishing the Committee of European Securities Regulators (2001/527/EC, OJ L 191, 13.7.2001, p. 43), amended by Commission Decision of 5 November 2003 (2004/7/EC, OJ L 3, 7.1.2004, p. 32), and Commission Decision of 6 June 2001 establishing the European Securities Committee (2001/528/EC, OJ L 191, 13.7.2001, p. 45), amended by Commission Decision of 5 November 2003 (2004/8/EC, OJ L 3, 7.1.2004, p. 33).

⁶ See Articles 1, 6, 8, 14, 16 and 17 of Directive 2003/6/EC (Market Abuse, OJ L 96, 12.4.2003, p. 16); Articles 2, 4, 5, 7, 8, 10, 11, 13-15, 20 and 24 of Directive 2003/71/EC (Prospectus, OJ L 345, 31.12.2003, p. 64); Articles 2, 4, 13, 15, 18, 19, 21, 22, 24, 25, 27-30, 40, 44, 45, 56, 58 and 64 of Directive 2004/39/EC (Markets in Financial Instruments, OJ L 145, 30.4.2004, p. 1); and Articles 2, 4, 5, 9, 11, 11a, 11b, 13-15, 17-19, 23 of the draft Transparency Directive (see http://europa.eu.int/comm/internal_market/securities/transparency/index_en.htm).

⁷ For example, the Lisbon European Council of 23-24 March 2000 called for the Financial Services Action Plan to be implemented by 2005; and the Brussels European Council of 25-26 March 2004 called for the Directives on Markets in Financial Instruments and on Transparency obligations to be finalised before the end of the then current Parliament.

⁸ This letter can be viewed on the Commission’s website:

http://europa.eu.int/comm/internal_market/securities/docs/lamfalussy/fb-letter-2001-10_en.pdf

⁹ The full text of President Prodi’s declaration can be found at:

<http://europa.eu.int/rapid/pressReleasesAction.do?reference=SPEECH/02/44&format=HTML&agued=1&language=EN&guiLanguage=en>

- The Commission has been fully transparent with the Parliament with respect to the adoption of Level 2 measures. It has discussed with the Parliament, in the early stages, the scope of Level 2 implementing powers for each Lamfalussy Directive. The Parliament has benefited from a three-month period to react to draft implementing measures at Level 2, receiving the first draft at the same time as the Member States. Every effort has been made to take the Parliament's views into account. The Parliament also has a one-month period in which to pass a Resolution in respect of the final draft of Level 2 measures where it considers that the Commission has exceeded its implementing powers. To date, no such Resolutions have been passed;
- All Lamfalussy framework Directives all contain '**sunset clauses**' relating to the exercise of the Commission's power to adopt implementing measures at Level 2, in line with the wishes of the Parliament. The Commission's delegated powers expire four years after the entry into force of the Level 1 measure unless they are renewed through the co-decision procedure by the Council and the Parliament;
- The Commission supported the Parliament in its aim of securing equivalent control rights in the new draft **Constitutional Treaty** over powers delegated to the Commission;
- The Commission continues to consult Member States and their regulators on any impending proposals, *inter alia* through the ESC and CESR;
- All Level 2 measures so far submitted by the Commission to the ESC have been agreed without a single Member State voting against them, demonstrating the cooperative spirit within which Level 2 functions;
- The Commission has ensured a high level of transparency with regard to the work of the ESC and CESR and has kept the Parliament informed of its work;
- CESR has set up a **market participants panel** as requested by the Parliament;
- An **Inter-Institutional Monitoring Group** has been established, as called for by the Stockholm European Council "to assess the progress made on implementing these proposals to secure a more effective securities market regulatory system, identifying the bottlenecks". The Group has so far produced two reports¹⁰ identifying the major pressing concerns relating to the practical application of the Lamfalussy process. A third report will be published during November 2004.

¹⁰

The reports can be accessed on the Commission's website:
http://europa.eu.int/comm/internal_market/securities/monitoring/index_en.htm

Level 1 outcomes

9. The Lamfalussy process has provided a significant impetus in delivering successful agreements on four key measures of the Financial Services Action Plan:
- the **Market Abuse Directive**¹¹ was adopted on 3 December 2002;
 - the **Prospectus Directive**¹² was adopted on 15 July 2003;
 - the **Markets in Financial Instruments Directive**¹³ was adopted on 27 April 2004;
 - political agreement was reached on 11 May 2004 on the **Transparency Directive**¹⁴.
10. The more thorough preparation that the Commission has undertaken under the Lamfalussy process has been invaluable. The average time taken to negotiate the four first framework directives under the Lamfalussy process, from the proposal stage to adoption (or political agreement in the case of the Transparency Directive), averaged around 20 months.
11. This compares very favourably to the time taken to negotiate previous Directives: 2½ years for the 1989 Insider Dealing Directive¹⁵, 4 years for the 1993 Investment Services Directive¹⁶ and over 9 years for one of the forerunners of the Prospectus Directive¹⁷. Indeed, without the Lamfalussy process, all the technical detail would have had to be included in the framework Directive. In such circumstances it is likely that political discussions at Level 1 would barely have begun.

Level 2 outcomes

12. At Level 2, measures implementing the Market Abuse and Prospectus Directives were adopted by the end of April 2004 – two Regulations and three Directives.

¹¹ Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), OJ L 96, 12.4.2003, p. 16.

¹² Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, OJ L 345, 31.12.2003, p. 64.

¹³ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, OJ L 145, 30.4.2004, p. 1.

¹⁴ See http://europa.eu.int/comm/internal_market/securities/transparency/index_en.htm

¹⁵ Council Directive 89/592/EEC of 13 November 1989 coordinating regulations on insider dealing, OJ L 334, 18.11.1989, p. 30 (proposed 18 April 1987).

¹⁶ Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field, OJ L 197, 6.8.1993, p. 57 (proposed 14 December 1988).

¹⁷ Council Directive 89/298/EEC of 17 April 1989 coordinating the requirements for the drawing-up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public, OJ L 124, 5.5.1989, p. 8 (proposed 23 December 1980).

Further measures will need to be agreed to complete the Markets in Financial Instruments Directive and the Transparency Directive before the end of 2005.

Improvements made to the process during the first three years of operation

13. The constant feedback delivered as a result of cooperative engagement between the three Institutions on the one hand, and external stakeholders on the other, has been invaluable in improving the Lamfalussy process in its first few years.
14. The Commission, as the Institution with key responsibility for managing the process, has sought to respond positively to the requirements of other actors:
 - Having gathered significant practical experience with regard to the preparatory stages of the Market Abuse and Prospectus Directives, and in response to views expressed by market participants, the Commission services **pre-consulted extensively** in advance of issuing its proposals for the Level 1 Directives on Markets in Financial Instruments and Transparency Obligations;
 - Within the constraints placed by the transposition deadlines in the Level 1 measures, the Commission services has sought to provide CESR with sufficient time in which to provide its advice on the possible content of Level 2 measures, where possible, through seeking to ensure a period of **12 months** as standard and in certain (though limited) cases, it has extended deadlines;
 - Through the provision of **working documents** that contain an initial Commission services view on content of draft Level 2 measures, and partly in response to views expressed by market participants, the Commission has been able to take into account the views of market participants – along with those of the European Parliament – *before* presenting a formal draft to the ESC;
 - The Commission services have sought to ensure that **provisional Mandates** to CESR do not cover issues that might undermine negotiations in the Council and the Parliament; and it has responded swiftly and positively where concerns have been raised that such issues had been included in a *draft* provisional Mandate. For example, in the context of the Directive on Markets in Financial Instruments, issues such as conduct of business rules and pre-trade transparency were omitted from the provisional mandate transmitted to CESR;
 - In response to a request from market participants, the Commission services prepared a document **explaining the main differences** between CESR's advice and the Commission's draft measures implementing the Market Abuse and Prospectus Directives. This practice will continue for other Lamfalussy measures.

15. CESR has also developed high levels of transparency. In particular:
- It has made extensive information available on its website, including details of its expert and operational groups, its market participants panel, its hearings and all consultations;
 - It has produced **feedback statements** following all public consultations, explaining its reasons for adopting or rejecting specific policy options in the advice it delivers to the Commission.

III. HOW THE PROCESS MIGHT BE FURTHER IMPROVED IN THE FUTURE

16. The Lamfalussy process is proving to be a clear success overall. This is a view that market participants and the Inter-institutional Monitoring Group appear to support, as do the other Institutions, which have agreed to extend it to banking, insurance and occupational pensions. Nevertheless, the Lamfalussy process is a dynamic one, and there is little experience yet of Levels 3 and 4 of the process, for example. Whilst full evaluation of the Lamfalussy process will have to wait until wider experience of its workings has been gained, this section of the document considers some practical suggestions to improve further the working arrangements of the process.

Timetables

17. **Timetables** for the agreement of both legislative (Level 1) and implementing (Level 2) measures remain a problem. Allowing for consultation at each stage in the process has, unequivocally, delivered a better result; but it has extended timetables and sometimes produced ‘pinch-points’ further down the process – which impact on the resources of the Institutions, CESR and market participants alike. Meanwhile, **parallel working**, the practice where CESR is furnished with a provisional Mandate to deliver advice on the possible content of Level 2 measures before the Level 1 measure has been agreed, is unpopular in principle with some market participants, who have expressed concerns that work at Level 2 might influence on-going negotiations at Level 1.
18. The Commission services have sought to minimise the problems associated with parallel working through deferring to a later Mandate those issues where a political consensus has yet to be found and through explaining the status of provisional mandates. This was the case for the Markets in Financial Instruments Directive, for example, though the corollary has been that there is less time for CESR to deliver advice on those issues covered only by the second, formal Mandate, if the transposition deadline for the Directive is to be met.
19. The Commission services note the recommendation contained in the second report of the Inter-institutional Monitoring Group that “For potential future legislative timetables, policymakers should seek an optimal balance between speed and the expected workload for all stakeholders.” The Commission services have sought in general to move to a standard period of 12 months in which CESR may provide advice. However, this can only work if the Institutions are able to agree realistic deadlines for the adoption and

transposition of Directives. In other words, some speed in the process may have to be sacrificed in order to optimise consultation practices. Market participants will need to bear this in mind if a subsequent market upturn produces significant changes in the market that require a technical regulatory response.

Level of detail in legislative and implementing measures

20. The **level of detail** contained in legislative measures at Level 1 and in implementing measures at Level 2 is also a problem that has been raised frequently, including in the Monitoring Group's reports. It is a particular concern at Level 1, where it is arguable that some measures contain details that, according to the underlying logic of the four-level regulatory approach, ought to have been left to Level 2.
21. The Commission services do not favour overregulation or excessive detail in measures adopted either at Level 1 or Level 2. The level of detail included should be limited to that required to ensure the smooth functioning of markets. Level 2 rules should be sufficiently precise and transparent to ensure the effective functioning of the Level 1 Directive they are intended to underpin, while avoiding unnecessary burden. The Commission has demonstrated this when it adopted implementing measures to underpin the Market Abuse and Prospectus Directives – and it intends to demonstrate it also for the Market in Financial Instruments and Transparency Directives.
22. The Commission services recognise, nevertheless, that there needs to be a **clearer articulation** of what roles and tasks should be performed at each level of the Lamfalussy process. Moreover, there needs to be more effort to build **trust**, so that all actors in the process – whether they represent the Institutions, CESR, market participants or end-users – are able to agree, in practice, on keeping the level of detail at an appropriate level at both Level 1 and Level 2.
23. The Lamfalussy report recommended “that the private sector along with European regulators, should lead a new training drive to improve the deployment of best practice and common understanding among regulators and market participants throughout the European Union”. This might help to build more trust between regulators and industry – as might exchanges and/or secondments.
24. The advice submitted by CESR on the possible content of Level 2 measures to underpin the Market Abuse and Prospectus Directives has been of high quality. However, there are concerns that CESR's advice needs to be seen as legitimate by market participants and others affected by the legislation that the advice will help to determine. It will be difficult to maintain CESR's consensual approach with 27 members. Transparency and democratic accountability could be increased if CESR were to adopt a **more transparent set of procedures** for adopting their advice and opinions.

Choice of legal instrument at Level 2

25. The Inter-institutional Monitoring Group expressed in its second report the view that the Commission should make more frequent use of **Regulations** at Level 2.

The use of Regulations at Level 2 was also advocated in the Lamfalussy report itself, the advantage being that they could speed up the implementation process, given their direct applicability.

26. A case-by-case approach has been taken on this issue, in line with the Lamfalussy report and in accordance with the principles established in the Treaty and in jurisprudence. In general, the Commission will propose a Regulation where the nature of the technical implementing measure leaves little scope for discretion in implementation; and/or where market participants wish to have the same rules applied throughout the EU, as was the case with the Prospectus Directive schedules or the safe harbour rules for buy-back and stabilisation programmes under the Market Abuse Directive.

Implementation and convergence – Level 3

27. **Level 3 is still largely untested and undefined.** The main purpose of Level 3 is to coordinate Member States' implementation efforts – but what this means in practice needs to be articulated more clearly.
28. In April 2004, CESR issued a consultation document¹⁸ on how Level 3 might work in three areas: coordinated implementation of EU law; regulatory convergence; and supervisory convergence.
29. Convergence through peer reviews amongst regulators and other joint working, benchmarking and agreement on common standards can be very useful tools to facilitate uniform and consistent implementation and application of EU legislation. Good coordination at Level 3 by CESR is likely to help convergence and indeed financial integration – and it could ease considerably the Commission's enforcement workload at Level 4.
30. The **mediation role** envisaged by CESR could become an effective way for enhancing co-operation between regulators and resolving any day-to-day problems. Indeed, the idea fits well with the requirement in Article 16 of the Market Abuse Directive that CESR should set up procedures for the rapid and effective solution of competent authorities' non-compliance with the obligations arising from the Directive related to the exchange of information and joint investigations. However, such a mechanism should not be seen as a substitute for the Commission's enforcement procedures, nor should it be considered an instance of appeal before a case reaches the Court of Justice.
31. Moreover, **Level 3 must evolve in a carefully modulated, open and transparent environment** that fully respects Institutional boundaries and the importance of democratic accountability. CESR standards adopted at Level 3 must be fully compatible with – and cannot substitute for – binding EU legislation at Levels 1 and 2. They should not prejudice the political process, nor the Institutional prerogatives of the Parliament, the Council or the Commission. That said, the Commission could decide, on a case-by case basis and after

¹⁸ The CESR consultation paper can be found at:
http://www.cesr-eu.org/consultation_details.php?id=34

consulting all stakeholders, to propose upgrading Level 3 standards to binding rules at Level 1 or Level 2.

32. There seems to be a case for further **examination of structures and powers of national regulators**, with the objective of facilitating and encouraging further medium term convergence among them. However, this is ultimately a question for Member States to decide.
33. Over the medium term, there is a case to consider starting work on amalgamating the existing securities rules (at Level 1 and Level 2) into a **common and consistent set of European rules** through codification.

Enforcement – Level 4

34. **Enforcement** will require a major effort. Prioritisation is of course important, but the Commission services will need to have sufficient resources in the future to enable it to concentrate on proper enforcement of the Lamfalussy measures in 25 Member States working in 20 languages, in addition to, where necessary, updating the Level 2 measures to take account of changes in the markets.
35. The Commission has already begun initiatives to facilitate better implementation. It has held **transposition workshops** with the Member States for the Market Abuse and Prospectus in order to reach common understandings on technical provisions in both Level 1 and Level 2 measures and it will shortly begin holding workshops on the Markets in Financial Instruments Directive. It has also set up a network of **single contact points** in Member States' finance ministries and is encouraging the production of **transposition tables** illustrating the way in which Member States have adopted the measures into their national law.

Better regulation

36. **Better regulation** has moved up the political agenda in recent years. The Commission takes this very seriously. The measures it proposes need to address, effectively, identified market failures or barriers to cross-border activity, based on evidence gathered, *inter alia*, through consultation. Over-regulation should be avoided – regulatory intervention should seek to tackle only those issues considered necessary to facilitate market integration or investor protection.
37. The Lamfalussy process is fully consistent with better regulation principles. As such, it is a model for better regulation in the financial services sector, since it allows for principles-based regulation at Level 1, based on early, broad, systematic consultation of all stakeholders, with all technical details that do not imply political decisions left to properly prepared Level 2 decisions. Moreover, all major Level 1 measures will in future be subject to a **regulatory impact assessment**. The Council and the Parliament also need to consider in the future how better to assess the impact of, and duly justify, the amendments that they propose to legislative measures.

Interaction of Community rules with those of other jurisdictions

38. **Better coordination with other jurisdictions**, such as the US, is likely to be crucial in the future in order to reduce the problems associated with regulatory overspill (as we have witnessed with the US Sarbanes-Oxley Act in the EU and with our own Financial Conglomerates Directive in the US). The **EU-US Regulatory Dialogue** between the Commission and the US Treasury and Securities and Exchange Commission (SEC) will remain an important forum for channelling such coordination. Moreover, CESR has begun to intensify its contacts with the US SEC, with particular regard to the advice it is currently preparing for the Commission services on credit rating agencies.

Obtaining better input from consumers in consultation processes

39. The Lamfalussy report recommended that the Commission consult market participants and end-users – both issuers and consumers. Consumers, however, have been less well represented in consultation processes than market participants, issuers and institutional investors. The report of the FIN-USE Group¹⁹, set up by the Commission, recommends effective involvement and representation of the user perspective at all levels of policymaking including vis-à-vis the Commission, the Lamfalussy committees and national regulators. The Commission services will consider how better to ensure that their views are taken into account. One possibility would be for CESR and its counterparts (see paragraph 42 below) to provide technical briefings to consumer associations on issues which affect consumers, to enable them to better contribute to consultation.

The Inter-institutional Monitoring Group

40. The current Inter-institutional Monitoring Group's mandate will expire at the end of 2004. The Commission services consider that this mechanism should continue and that a new Group should be nominated, with its mandate expanded to cover banking, insurance and occupational pensions as well as securities law. It may also be worth exploring whether the mandate should include wider issues such as financial stability. The new Group's working arrangements should be agreed by all the Institutions and the Group should make an annual report to the Institutions. Additional precision is needed on the scope of its mandate.

IV. FURTHER DEVELOPMENTS AND THE FUTURE

Extension of the Lamfalussy process to other financial services sectors

41. On 6 November 2003 the Commission launched a package of seven measures which will extend the Lamfalussy process to **banking, insurance and occupational pensions** and expand the work of the ESC and CESR in the securities sector to include **asset management (UCITS)**, thus allowing for a more modern, streamlined and flexible decision-making structure for all

¹⁹ FIN-USE's first report was published on 12 October 2004 and is available on the Commission's website: http://www.europa.eu.int/comm/internal_market/finservices-retail/finuse_en.htm

financial services sectors. The Council reached political agreement on the Directive at the ECOFIN Council of 11 May 2004. The Directive foresees a review of its provisions before the end of 2007.

42. The package will create four new committees. The **European Banking Committee (EBC)** and **European Insurance and Occupational Pensions Committee (EIOPC)** will, like ESC, assist the Commission in adopting implementing measures at Level 2 for Level 1 Directives in their respective areas, once the Directive has been adopted. The **Committee of European Banking Supervisors (CEBS)** and the **Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS)**, which have already been established, bring together national supervisors. Responsibility for overseeing the implementation of Community law on collective investment funds has been transferred from the UCITS Contact Committee to the ESC and CESR.

Good inter-institutional cooperation in the accounting sector

43. The Regulation on the application of **international accounting standards (IAS)**²⁰ refers in its recitals to the declaration made by President Prodi before the European Parliament²¹. The good cooperation between Institutions in the framework of the securities sector is thus being applied to implementing measures adopted under the Comitology procedure²² for IAS.

The new Constitutional Treaty

44. Heads of State and Government of the EU Member States reached agreement on a new Constitutional Treaty on 18 June 2004. Once ratified in all Member States, this will come into effect on 1 November 2006.
45. The following Declaration on Article I-36 of the draft Constitutional Treaty²³ has been to be annexed to the Final Act: “The Conference takes note of the Commission’s intention to continue to consult experts appointed by the Member States in the preparation of draft delegated European regulations in the financial services area, in accordance with its established practice.” Acts adopted under Article I-36 would allow the Council and the European Parliament equal control rights over the Commission’s exercise of its delegated powers.

V. CONCLUSIONS

46. The Commission services conclude that significant progress has been made. The Lamfalussy process has been fully implemented on schedule; and it is now being extended to banking, insurance and occupational pensions.

²⁰ Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, OJ L 243, 11.9.2002, p. 1. See Recital (8).

²¹ See footnote 7 above.

²² See footnote 3 above.

²³ The draft Constitutional Treaty can be found at:
<http://ue.eu.int/igcpdf/en/04/cg00/cg00087.en04.pdf>

47. The ‘three Ts’ – transparency, trust and teamwork – are the cornerstones of the Lamfalussy process. The open and transparent way in which work on delivering the Lamfalussy measures has been pursued has resulted in an improvement in the quality of legislation and an acceleration of the legislative process; and it has encouraged regulatory and supervisory convergence within Europe. Likewise, the cooperative working framework that has been developed between all the Institutions, working with regulators, market participants and other stakeholders, has been another important factor and should continue. The Commission will continue to respect scrupulously its agreed working arrangements with the European Parliament.
48. The Commission services attach great importance to the application of better regulation principles and to effective consultation and monitoring mechanisms at all levels. Consultative processes carried out by the regulators (CESR, CEIOPS and CEBS) and the Commission must be comprehensive and transparent with sufficient time allocated to them²⁴. Likewise, there must be reasonable time set aside both for the implementation of financial services Directives with technical implementing measures, and for market participants to be able to adjust.
49. Consideration should be given to the following practical suggestions:
- Strengthening efforts by the Commission, CESR and other players to foster greater understanding of the innovative architecture of the Lamfalussy process, in particular the roles and tasks assigned to the respective levels of the process;
 - Focusing Level 1 Directives on, above all, general rules and principles;
 - Careful calibration of Level 2 technical measures so as to avoid over-prescriptive regulation and/or duplicative requirements at EU level;
 - In the light of developing experience, articulating more clearly the role of Level 3 in the Lamfalussy process – both in terms of timing and as regards its relationship with other levels in the process – with due regard for the Institutional prerogatives of the Parliament, the Council and the Commission;
 - Further examination of the structures and powers of national regulators – with the objective of facilitating and encouraging further medium-term convergence among them;
 - Strengthening Level 4 through clear, practical arrangements, whereby the Commission, working with the Member States and national regulators, should lead a major effort to implement and enforce effectively the set of existing rules;
 - Taking steps to obtain better input from consumers in consultation processes, for example by providing technical briefings to consumer associations;

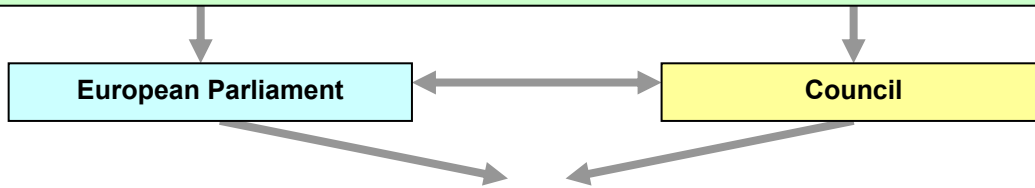
²⁴ Commission Communication on “General principles and minimum standards for consultation of interested parties by the Commission” COM(2002) 704 final.

- Over the medium term, starting work on bringing together the existing securities rules in a common and consistent set of European rules through codification;
- Expanding the mandate of the Inter-institutional Monitoring Group to cover banking, insurance and occupational pensions, in addition to securities law; and the nomination of new members and agreement of working arrangements by the Institutions, including the presentation of an annual report by the Group to the Institutions;
- Intensifying the current regulatory dialogue with third countries, in particular the United States, to ensure upstream convergence of regulatory principles in the financial services area to the maximum extent possible;
- Making sufficient resources available to carry out this crucial work.

Annex 1: The four-level regulatory approach under the Lamfalussy process

LEVEL 1

Commission adopts formal proposal for Directive/Regulation after a full consultation process



Reach agreement on framework principles and definition of implementing powers in Directive/Regulation

LEVEL 2

Commission, after consulting the **European Securities Committee**, requests advice from the European Securities Regulators Committee on technical implementing measures on the basis of a provisional mandate which is made formal once final agreement has been reached on the Level 1 measure

Committee of European Securities Regulators prepares advice in consultation with market participants, end-users and consumers, and submits it to **Commission**

Commission examines the advice and, following the publication of a working document containing an initial view on the content of the draft implementing measure, makes a proposal to **European Securities Committee**

European Securities Committee votes on proposal within a maximum of 3 months

Commission adopts measure

European Parliament kept fully informed and can adopt a Resolution if measures exceed implementing powers

LEVEL 3

Committee of European Securities Regulators works on joint interpretation recommendations, consistent guidelines and common standards (in areas not covered by EU legislation), peer review, and compares regulatory practice to ensure consistent implementation and application

LEVEL 4

Commission checks Member State compliance with EU legislation

Commission may take legal action against Member State suspected of breach of Community Law