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Regulating Financial Services in Europe: a New Approach

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John F. Mogg

Abstract

In March 2000, European leaders met in Lisbon, Portugal, to consider the state of the European economy. While there had been economic growth in Europe in the 1990s, it had been consistently lower than that of the European Union's ("EU" or "Union") main competitors, with unemployment levels remaining stubbornly high. Determined to blaze a new course in Europe, Heads of State and Government announced that "the Union has [today] set itself a new strategic goal for the next decade: to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable growth with more and better jobs and greater social cohesion." These conclusions on economic reform contained a range of policies to stimulate key sectors of the European economy. Delivering this major goal would mean that the EU needed to equip itself with efficient, transparent, and above all, integrated European financial markets. To achieve this, European leaders called for the implementation of the European Commission's 1999 Financial Services Action Plan by 2005. This target was as ambitious as it was essential, recognizing the fundamental strategic importance of integrated European financial markets for the whole European economy. The economic benefits of improving companies' access to investment capital and encouraging investors in such an integrated market were seen as central to its achievement. Attention has focused on the importance of achieving higher levels of harmonization of regulations in securities markets. Although turnover on European stock exchanges reached record levels at the end of the 1990s, capital markets remained regulated by essentially outmoded EU legislation, some of which dates back two decades. This is one of the main reasons why levels of capitalization of European stock exchanges have remained considerably below those of the U.S. markets. And despite the 1992 deadline for completion of the EU's internal market and the fact that many Member States had modernized their market regulations in the 1990s, little had changed at the European level to create a true level playing field. Against this background, and in order to achieve the ambitious goal set at the Lisbon summit, in July 2000, the Council of Economic and Finance Ministers established a high level group of independent figures, the Committee of Wise Men, chaired by Baron Alexandre Lamfalussy, to develop fresh thinking on the reform of the regulatory process for securities. The European Institutions in the course of 2001 endorsed their proposals, and their application is now being extended from securities to all financial services sectors in the Union.

REGULATING FINANCIAL SERVICES IN EUROPE: A NEW APPROACH

*John F. Mogg**

INTRODUCTION

In March 2000, European leaders met in Lisbon, Portugal, to consider the state of the European economy. While there had been economic growth in Europe in the 1990s, it had been consistently lower than that of the European Union's ("EU" or "Union") main competitors, with unemployment levels remaining stubbornly high. Determined to blaze a new course in Europe, Heads of State and Government announced that "the Union has [today] set itself a new strategic goal for the next decade: to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable growth with more and better jobs and greater social cohesion."[1] These conclusions on economic reform contained a range of policies to stimulate key sectors of the European economy. Delivering this major goal would mean that the EU needed to equip itself with efficient, transparent, and above all, integrated European financial markets. To achieve this, European leaders called for the implementation of the European Commission's 1999 Financial Services Action Plan by 2005.[2] This target was as ambitious as it was essential, recognizing the fundamental strategic importance of integrated European financial markets for the whole European economy. The economic benefits of improving companies' access to investment capital and encouraging investors in such an integrated market were seen as central to its achievement. Attention has focused on the importance of achieving higher levels of harmonization of regulations in securities markets. Although turnover on European stock exchanges reached record levels at the end of the 1990s, capital markets remained

* The author was Director-General of the Internal Market Directorate-General of the European Commission between 1993 and September 2002. All views expressed in this Article are strictly personal.

1. *See* Lisbon European Council, Presidency conclusions, E.U.BULL., no. 3, at 7 (2000), [hereinafter Lisbon Presidency conclusions], *available at* http://europa.eu.int/council/off/conclu/.

2. *See* European Commission, *Implementing the Framework for Financial Markets: Action Plan*, COM (99) 232 Final (June 1999) [hereinafter FSAP].

regulated by essentially outmoded EU legislation, some of which dates back two decades. This is one of the main reasons why levels of capitalization of European stock exchanges have remained considerably below those of the U.S. markets.[3] And despite the 1992 deadline for completion of the EU's internal market and the fact that many Member States had modernized their market regulations in the 1990s, little had changed at the European level to create a true level playing field. Against this background, and in order to achieve the ambitious goal set at the Lisbon summit, in July 2000, the Council of Economic and Finance Ministers established a high level group of independent figures, the Committee of Wise Men, chaired by Baron Alexandre Lamfalussy, to develop fresh thinking on the reform of the regulatory process for securities. The European Institutions in the course of 2001 endorsed their proposals, and their application is now being extended from securities to all financial services sectors in the Union.

I. *THE EU INTERNAL MARKET*

The Treaty establishing the European Community ("EC Treaty" or "Treaty") entrusts the Community with the task of promoting the harmonious development of economic activities, a continuous and balanced expansion, increased stability, a rapid rise in living standards, and closer relations among its Member States.[4] Achieving a fully Internal Market in the Union requires the abolition of obstacles to the free movement of goods, persons, services, and capital among Member States, thereby improving efficiency by securing a better allocation of economic resources.[5] The Internal Market is the economic basis of the EU. It currently comprises a market of 370 million con-

3. European stock markets remain about half of the size of those in the United States.

4. Consolidated version of the Treaty establishing the European Community, art. 59, O.J. C 340/3, at 200 (1997), 37 I.L.M. at 62 (ex art. 73f) [hereinafter Consolidated EC Treaty], *incorporating changes made by* Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, Oct. 2, 1997, O.J. C 340/1 (1997) [hereinafter Treaty of Amsterdam] (amending Treaty on European Union ("TEU"), Treaty establishing the European Community ("EC Treaty"), Treaty establishing the European Coal and Steel Community ("ECSC Treaty"), and Treaty establishing the European Atomic Energy Community ("Euratom Treaty") and renumbering articles of TEU and EC Treaty).

5. *See id.* art. 251, O.J. C 340/3, at 279-80 (1997), 37 I.L.M. at 141-42 (ex art. 189b).

sumers and could expand to nearly 500 million in the next wave of enlargement. It constitutes an incomparable source of opportunities for European business and industries and provides the stimulus for Europe's quest for global competitiveness. The Internal Market is a highly successful European initiative that is at the very heart of economic and political integration. The beneficiaries of a rising economic prosperity are Europe's businesses and citizens, with consumers enjoying a wider range of goods and services, usually at lower prices. The Internal Market also delivers a corpus of rights, which citizens and businesses can directly invoke to allow them to work and to move freely throughout the Union. It is based on a set of rules either deriving directly from the Treaty (primary legislation) or from secondary legislation adopted by the Council and the Parliament on the basis of proposals from the Commission. This legal framework is the key to the Internal Market's success. Economic advantages can be fully exploited only if the legal framework is complete, coherent, up-to-date, and well implemented. These rules go beyond the strictly economic domain. To establish an area without internal frontiers, to allow the free movement of goods, persons, services, and capital, common (harmonized) rules are a must. These are designed to achieve an equivalent level of protection with respect to a number of general interest objectives including the protection of consumers,[6] the environment,[7] and the sustainability of the so-called European Social Model. This balanced approach seeks to remove obstacles to free movement while at the same time ensuring a high level of protection of public interest objectives. It is the basis for the Union's ambitions agreed upon at Lisbon.[8] Over time, many hundreds of directives and regulations have been adopted by the Institutions of the European Community ("EC" or "Community") and applied by its Member States. The measures already adopted relate *inter*

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6. *See id.* art. 153(2), O.J. C 340/3, at 248 (1997), 37 I.L.M. at 110 (ex art. 129a) (requiring "consumer protection requirements" to be "taken into account" in all other Community policies and actions).

7. *See id.* art. 6, O.J. C 340/3, at 183 (1997), 37 I.L.M. at 45 (ex art. 3c) (requiring "environmental protection requirements" to be "integrated into the definition and implementation of . . . Community policies and activities").

8. *See* Lisbon Presidency conclusions, *supra* n.1; *see also* Commission Communication, *Realising the European Union's Potential: Consolidating and Extending the Lisbon Strategy*, COM (2001) 79 Final (Feb. 2001); Commission Communication, *The Lisbon Strategy — Making Change Happen*, COM (2002) 14 Final (Jan. 2002).

alia to the liberalization of public procurement; the harmonization of taxation; the liberalization of capital markets and financial services; the progress in standardization of products; the removal of technical and physical barriers (elimination of border checks) inhibiting the free movement of individuals; and the liberalization of services (telecommunications, energy, and so on) representing more than seventy percent of the Union's Gross National Product ("GNP").

Given that the Internal Market is evolving, modifications and improvements to its policies will need to continually be introduced. Four key challenges lie ahead. First, the legal framework is incomplete: in some sectors, there is, in effect, no Internal Market because some (or all) of the necessary rules have not been fully adopted. This is typically the case not only in the area of financial services, but also in services generally. Second, given such changes and the emergence of new concerns, questions arise as to how far legislation is able to respond to the pace of change in society and to the markets. It is doubtful whether the EU's existing legislative model will be able to deliver a response that matches the pace of change and the huge demands that enlargement will place on it. Third, existing rules are the accumulation of many decades of legislation. Successive amendments have often rendered that legislation overly complex and difficult for "end users" to understand and implement. A determined effort of simplification at both, national and EU level, is needed for both, present and future legislation. The Commission's recently adopted ambitious package of measures on "better regulation" was precisely targeted to meet these challenges.[9] Finally, no amount of rule-making can work if the rules themselves are not well implemented. This task falls to the Member States and their national courts, but Community Institutions, and in particular the Commission as guardian of the Treaty, also have major responsibilities to secure effective implementation.

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9. *See* Commission Communication, *European Governance: Better Lawmaking*, COM (2002) 275 Final (May 2002); Commission Communication, *Simplifying and Improving the Regulatory Framework*, COM (2002) 278 Final (June 2001); Commission Communication on Impact Assessment, COM (2002) 276 Final (June 2002); Commission Communication, *Towards a Reinforced Culture of Consultation and Dialogue*, COM (2002) 277 Final (June 2002).

II. *THE EU'S DECISION-MAKING PROCESS*

The EU is built on a unique institutional system. Fifteen Member States have pooled sovereignty for certain matters and placed it in the hands of independent European Institutions, which represent the interests of the Union as a whole, its member countries, and its citizens. The European Court and European Commission traditionally uphold the interests of the Union as a whole. Each national government is represented within the Council of Ministers, and citizens directly elect the European Parliament. Democracy and the rule of law are therefore the cornerstones of the EU's structure.[10] The Commission has been seen as the driving force of European integration, given its right of initiative and its role as guardian of the Treaty. That exclusive right of initiative is exercised not only in relation to legislation, but also with respect to the EU's budget and international agreements. This means that as a general rule, the Council and the European Parliament adopt legislation only on the basis of a Commission proposal, and that at any time during the procedures, the Commission can amend or, if it considers it necessary, withdraw its proposal.[11] The Council of Ministers is composed of one representative from each Member State, who is empowered to commit his Government.[12] Which national Ministers attend each Council meeting depends on the subject discussed, but this does not affect the institutional unity of the Council. One of the main responsibilities of the Council is to act as the Community's legislative body. For issues concerning the Internal Market, this legislative power is shared with the European Parliament under the "co-decision" procedure (see below). Elected every five years by direct universal suffrage, the Euro-

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10. *See* Consolidated version of the Treaty on European Union, art. 6, O.J. C 340/2, at 153 (1997), 37 I.L.M. 45 (ex art. 3c) (stating that "[t]he Union is founded on the principles of liberty, democracy, the respect of human rights and fundamental freedoms, and the role of law, principles which are common to the Member States") [hereinafter Consolidated TEU], *incorporating changes made by* Treaty of Amsterdam, *supra* n.4.

11. *See* Consolidated EC Treaty, *supra* n.4, art. 250-52, O.J. C 340/3, at 279-81 (1997), 37 I.L.M. at 141-43 (ex art. 189a-c) (governing various types of legislative procedure, which gives the Commission power of legislative initiative); *see also* art. 250(2), O.J. C 340/3, at 279 (1997), 37 I.L.M. at 141 (ex art. 189a) (stipulating that the Commission may alter its proposal for legislation at any time before final action by the Council).

12. *See id.* art. 203, O.J. C 340/3, at 264 (1997), 37 I.L.M. at 126 (ex art. 146).

pean Parliament is the expression of the democratic will of the Union's citizens.[13] The Maastricht Treaty of 1992[14] and the Amsterdam Treaty of 1997[15] have considerably increased the power and influence of the European Parliament, which has been transformed from a purely consultative body into a legislative Parliament. Brought together within pan-European political groups, all the major political parties operating in the Member States are represented. The most common legislative procedure is called "co-decision," which places the European Parliament and the Council on an equal footing in relation to the adoption of joint Council and Parliament acts.[16] If the two Institutions disagree, a conciliation committee is convened to seek a compromise.[17] This co-decision procedure is used for the adoption of Internal Market legislation and, more specifically, legislation in the field of financial services. The legislative instruments are usually directives and — far less frequently in the area of the Internal Market — regulations. A directive is binding as to the result to be achieved upon each Member State to which it is addressed, but leaves to the national authorities the choice of form and methods.[18] A regulation has general application, it is binding in its entirety and directly applicable in all Member States.[19]

A. *Comitology*

In accordance with the EC Treaty, the co-legislators may confer on the Commission, in the acts they adopt, powers for the implementation of the rules they have laid down, including cer-

13. *See id.* art. 190, O.J. C 340/3, at 260-61 (1997), 37 I.L.M. at 122-23 (ex art. 138).

14. Treaty on European Union, Feb. 7, 1992, O.J. 224/1 (1992), [1992] 1 C.M.L.R. 719 [hereinafter TEU] (amending Treaty establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11 [hereinafter EEC Treaty], *as amended by* Single European Act, O.J. L 169/1 (1987), [1987] 2 C.M.L.R. 741 [hereinafter SEA]. The Treaty on European Union ("TEU") was amended by the Treaty of Amsterdam, *supra* n.4. These amendments were incorporated into the TEU, and the articles of the TEU were renumbered in the Consolidated TEU, *supra* n.10.

15. Treaty of Amsterdam, *supra* n.4.

16. *See* Consolidated EC Treaty, *supra* n.4, art. 251, O.J. C 340/3, at 279-80 (1997), 37 I.L.M. at 141-42 (ex art. 189b). *See also* GEORGE A. BERMANN, ROGER J. GOEBEL, WILLIAM J. DAVEY & ELEANOR M. FOX, CASES AND MATERIALS ON EUROPEAN UNION LAW ch. 3 (2d ed. 2002) [hereinafter GOEBEL, ET.AL.] (generally describing Community legislation and legislative process, notably co-decision procedure).

17. *See id.* art. 251(4),(5) and (6), O.J. C 340/3, at 280 (1997), 37 I.L.M. at 142 (ex art. 189b).

18. *See id.* art. 249, O.J. C 340/3, at 278 (1997), 37 I.L.M. at 140 (ex art. 189).

19. *See id.*

tain requirements, which may be imposed with respect to the exercise of these powers.[20] In practice, this means that every legal act, directive or regulation indicates the extent of implementing powers conferred upon the Commission and the way in which the Commission must exercise them. A committee always assists the Commission in the exercise of any such implementing powers. The rules governing the work of these committees have been established in accordance with pre-established models in Council Decision No. 1999/468/EC ("Comitology Decision").[21] The Comitology Decision provides certain criteria for the choice of committee procedures. "Regulatory committees" are established when the Commission is empowered to adopt implementing measures of general scope designed to apply the essential provisions of the basic instrument, and/or measures designed to adapt or update its non-essential provisions. The Comitology Decision also simplifies the requirements in the exercise of implementing powers conferred on the Commission and defines how the European Parliament is involved (an issue on which there is now considerable controversy), including improvements to the information flow to the European Parliament.[22] The Commission is required to inform the Parliament on a regular basis of committee proceedings and transmit to it documents related to the activities of the committees. These comitology committees are also a place for discussion and technical advice. Chaired by the Commission, they are comprised exclusively of Member State representatives. The Commission thus has the opportunity to discuss implementing measures with national administrations before their adoption. In this way, the Commission has the possibility of adapting the implementing measures to the legal and technical realities of each Member State.

20. *See id.* art. 202, O.J. C 340/3, at 264 (1997), 37 I.L.M. at 126 (ex art. 145).

21. *See* Council Decision No. 1999/468/EC, O.J. L 184/23 (1999) (replacing Council Decision No. 87/373/EEC, O.J. L 197/33 (July 13, 1987).

22. *See id.* If the Parliament considers that a proposed implementing measure exceeds the implementing powers given to the Commission, it will inform the Council of its position. The Council will then decide whether it agrees or opposes the draft measure. If the Council does not react within three months, the Commission will adopt the draft implementing measure. *Cf. Final Report of the Committee of Wise Men on the Regulation of European Securities Markets, 2001*, at 41, art. 5 (2001), *available at* http://europa.eu.int/comm/internal_market/en/finances/banks/wisemen.htm [hereinafter Comitology Report].

B. *Better Governance*

In July 2001, the Commission presented its White Paper on European Governance ("*Governance White Paper*").[23] Its basic message was simple and is as topical today as it was then: "We, European Institutions and the Member States, need to govern ourselves better — together." That objective could be achieved without changing the Treaty and without (necessarily) awaiting the successful outcome of a new intergovernmental conference. Better governance calls for an active co-operation between the European Parliament, the Council, the Commission, and the national governments, so that the people of Europe can more clearly see how they themselves relate to major projects and the Union's day-to-day business. The richness of the "Community method" is that it produces rules that are legally certain and can be applied in any national context. However, there are many complex issues at stake in enacting good European legislation, which succeeds in taking appropriate account of the principles of subsidiarity and proportionality. Citizens take an interest in the effectiveness of the rules handed down "from Brussels" and the way they are drawn up.[24] The advent of a European democratic conscience strengthens the need for accountability and proportionality in the way powers vested in the European Institutions are exercised. This need is expressed more especially in the demands for transparency, clarity, and a willingness to be subject to scrutiny.

The European Parliament has, for its part, stressed the primacy of political accountability behind any legislative action, bringing out the need for more transparent, equitable, and broad consultation. It is the very nature of the legislative process, which is now under scrutiny and debate in the Union.

There has been criticism that past directives have tended to regulate in too great detail. The Commission is therefore increasingly reflecting the original definition of the directive as laid down in the Treaty, whereby, as far as possible, directives are general in nature and cover the objectives, periods of validity, and essential aspects of legislation. It will be for the co-legisla-

23. *See* European Commission, *White Paper on European Governance*, COM (2001) 428 Final (Jul. 2001) [hereinafter *Governance White Paper*].

24. *See* Consolidated EC Treaty, *supra* n.4, art. 5, O.J. C 340/3, at 182-83 (1997), 37 I.L.M. at 44-45 (ex art. 3b).

tors to decide under what form the essential aspects will appear in their initial policy decision, and to ensure that the technicalities and details are a matter for executive measures.

Targeting directives in this way (with the consequences, *inter alia*, of simplifying legislation) can be achieved without undermining the legislative prerogatives of the European Parliament and the Council. Indeed, those Institutions will be able, more effectively, to concentrate their discussions on the fundamental aspects of legislation.

C. *EU Decision-Making for Financial Services*

The European Commission's *Governance White Paper* and the discussions that followed it clearly show the importance that European Institutions, national governments, businesses and individual European citizens attach to the issue. All sides agree that reform of the whole EU legislative process is essential. The key issue is how that can be achieved. In financial services, the picture is somewhat different. Reform, both, of policies and of the mechanisms needed to agree those policies, is well underway driven by the fundamental changes that are occurring in the sector. From a policy perspective, the critical moment in this process was the adoption of the Financial Services Action Plan in 1999 ("FSAP"). Since then, progress in implementing the FSAP has been considerable. At the time of writing, three quarters of the forty-five priority actions presented in the FSAP have been completed.[25] In financial services, the EU has not moved away from the Internal Market's basic concepts: direct applicability of the Internal Market freedoms; the principle of mutual recognition in the shape of a single European passport for credit institutions, insurance, and investment service providers; and co-ordination among the Member States on the basis of the home country control.[26] These concepts have been extended, made more effective and better implemented.

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25. *See* FSAP, *supra* n.2.

26. These basic concepts were set out in the *Commission White Paper on Completing the Internal Market*, COM (85) Final 310 (June 1985). For a general description of the *White Paper* and the Internal Market program, *see* GOEBEL, ET.AL., *supra* n.16, at ch.14 B, Sec. 1.

1. Basic Concepts

The basic Treaty provisions on the freedom of establishment and the free provision of services prohibit restrictions on the access to, or the exercise of, economic activities by self-employed persons and companies in a Member State other than the Member State of origin.[27] These freedoms confer far-reaching rights on the businesses established in the EU: they prohibit not only discrimination on grounds of nationality or the seat of a company, but any restriction, even if applied without distinction to national financial services providers and to those of other Member States, to the extent that such restrictions may prohibit, impede, or render less advantageous their economic activities. However, in accordance with established case law of the Court of Justice of the European Communities, such "indistinctly-applicable" restrictions can be justified by overriding reasons of general interest. Such a justification requires the proof that restrictions are appropriate to achieve the objective that they pursue and do not go beyond what is strictly necessary in order to attain that objective.[28] What does the prohibition of restrictions to the Internal Market freedoms mean? A Member State is required to recognize the legal status of a financial service provider coming from elsewhere in the Union. Specific derogations from this principle of mutual recognition are, however, daily practice in all Member States. In the absence of more precise Community legislation to co-ordinate national legislation, each Member State is able, with relative ease, to justify non-discriminatory national restrictions[29] on the basis of overriding concerns. Such justification includes consumer and investor protection,[30] protection of market stability,[31] and maintenance of the good repu-

27. *See* Consolidated EC Treaty, *supra* n.4, arts. 43, 49, O.J. C 340/3, at 195, 197 (1997), 37 I.L.M. at 57, 59 (ex arts. 52, 59) (describing free provision of services).

28. *See* Gebhard v. Consiglio dell' Ordine degli Avvocatie di Milano, Case 55/94 [1995] E.C.R. I-4165; Ramrath v. Ministre de la Justice, Case 106/91 [1992] E.C.R. I-3351; Säger v. Dennemeyer & Co. Ltd., Case C-76/90 [1991] E.C.R. I-4221.

29. Restrictions that are not based on grounds of nationality of the economic operator concerned.

30. *See* Societé Civile Immobiliere Parodi v. Banque H. Albert de Bay et Cie, Case 222/95 [1996] E.C.R. I-3899; Commission v. Germany, Case 205/84 [1986] E.C.R. 3755.

31. *See* Commission v. Italy, Case101/94 [1996] ECR I-2691 (discussing securities dealers).

tation of the financial sector.[32] For reasons such as these, Community legislation supplemented mutual recognition by introducing close co-ordination of financial market supervision in the 1980s. This is not the place to describe the entire Community legislation on credit institutions[33] and insurance.[34] Directives are built on the principle of mutual recognition: a Member State where a financial service provider is established grants the authorization necessary to take up and pursue the service provider's activities. The conditions for such authorization are in essence laid down in Community legislation. In effect, rather than a complex procedure, the authorization given acts as a "single passport" that all other Member States must recognize. Mutual recognition thus allows financial service providers to open a branch or to exercise their activities across national borders while the home Member State of the service provider remains responsible for the control and supervision of its activities.

III. *COMMUNITY LEGISLATION ON SECURITIES MARKETS*

Since the end of the 1970s, legislation has opened the way for European companies to raise capital on securities markets in other Member States. Coordination among Member States was intended to lead to a minimum level of investor protection while limiting the possibilities for host Member States to impose local requirements on those companies. These directives coordinated the conditions for admission of securities to official stock markets[35] and introduced a single passport system for the drawing

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32. *See* Alpine Investment, Case 384/93 [1995] ECR I-1141 (discussing prohibition of "cold calling" potential clients for investment in commodities).

33. *See* Directive No. 2000/12/EC, O.J. L 126, at 1 (2000) (relating to taking up and pursuit of business of credit institutions). This codified and combined Council Directive No. 77/780/EEC (1977) (relating to the taking up and pursuit of business credit institutions), Council Directive No. 89/299/EEC (1992) (relating to funds of credit institutions), Council Directive No. 89/647/EEC (1992)(relating to solvency ratio for credit institutions), Council Directive No. 92/30/EEC (1992) (relating to supervisions of credit institutions on consolidated basis, and Council Directive No. 92/121/EEC (relating to monitoring and control of large exposures of credit institutions).

34. *See* Council Directive No. 79/267/EEC, O.J. L 63 at 1 (1979) (relating to taking up and pursuit of the business of direct life assurance), *amended by* Council Directive No. 90/619/EEC, O.J. L 330, at 50 (1990). *See* Council Directive No. 73/239/EEC, O.J. L 228, at 3 (1973) (relating to direct insurance other than life insurance), *amended by* Council Directive No. 88/357/EEC, O.J. L 172, at 1 (1988), *amended by* Council Directive No. 92/49/EEC, O. J.L 228, at 1 (1992).

35. *See* Council Directive No. 79/279/EEC, O.J. L 66, at 21 (1979) (codified in Council Directive No. 2001/34/EC, O.J. L 184, at 1 (2001).

up, scrutiny, and distribution of the relevant prospectus to be provided to the public prior to the admission of securities to trading on stock exchanges.[36] Directive No. 89/298/EEC completed this framework with respect to public offer of securities[37] and Directive No. 82/121/EEC set up minimum regular reporting standards for information of investors imposed upon companies whose securities are traded on stock exchanges.[38] Despite the level of harmonization achieved by these directives, a number of barriers remained notably because only minimum requirements were harmonized. Member States could make use of the many options and exceptions with the result that implementation was quite divergent. The result was fifteen different sets of legislation and hence, a major fragmentation of European securities (especially retail) markets. Thus, Union legislation does not provide a fully developed regulatory framework for second-tier markets, such as the *Nouveau Marché* in Paris, or the *Neuer Markt* in Frankfurt, and also allows each Member State to impose its national language when securities are offered to its nationals on its stock exchange. Companies wanting to raise capital throughout the Union are thus required to translate the relevant information (the prospectus) into the eleven official languages. Faced by such obstacles and the many different national requirements, many European companies often consciously choose not to enter securities markets in other Member States. In other directives that cover the integrity and stability of securities markets similar inconsistencies reinforced market fragmentation. Directive No. 89/592/EEC ("Insider Dealing Directive") provides for a minimum set of rules to protect investors against insider dealers by security issuers and financial intermediaries.[39] Innovative and sophisticated capital markets have, however, rarely allowed

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36. *See* Council Directive No. 80/390/EEC, O.J. L 100, at 1 (1980) (coordinating the requirements for the drawing up, scrutiny, and distribution of listing particulars to be published for admission of securities to official stock exchange listing), *amended by* Council Directive No. 94/18/EC, O.J. L 135, at 1 (1994) (codified in Directive No. 2001/34/EC).

37. *See* Council Directive No. 89/298/EEC, O.J. L 124, at 8 (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).

38. *See* Council Directive No. 82/121/EEC, O.J. L 48, at 26 (1982) (discussing information to be published on a regular basis by companies whose shares have been admitted to official stock-exchange listing) (codified in Directive 2001/34/EC).

39. *See* Council Directive No. 89/592/EEC, O.J. L 339, at 30 (1989) (relating to insider dealing).

the pursuit of possible insider dealings. Similarly, some Member States have introduced rules on market manipulation (for example on the dissemination of false information) in the 1990s, while others have not. On market transparency, Council Directive No. 88/627/EEC ("Major Holdings Directive") introduced Community requirements for investors to inform the issuer of major acquisitions on the disposal of holdings in security issuers (subsequently the issuer has to inform the public).[40] The current thresholds of major holdings requiring information to the markets start at ten percent of the voting rights — yet most Member States have introduced much stricter disclosure rules. The taking up and the pursuit of a whole range of investment services, such as the activities of brokers, dealers, and underwriters, is also covered in Council Directive No. 93/22/EEC ("Investment Services Directive" or "ISD").[41] Before adoption, ISD had already been the subject of a number of difficult political compromises. While a single European passport for investment service providers was introduced, a number of important questions were left unresolved: these include the harmonization of "conduct of business rules" to allow mutual recognition of investment service providers' licenses and the absence of a clear distinction between professional and retail investors. Furthermore, phenomena such as Alternative Trading Systems and the "internalization" of orders through banks[42] have overtaken the approach originally adopted in the ISD.

A. *Overhauling Securities Legislation*

To contribute toward a greater integration of European markets and to respond to the impact of major innovation and technological changes in the way securities markets work required a new approach at European level. Existing legislation was often out of date since the legislative approach could not match the pace of market change and the evolution of complex,

40. *See* Council Directive No. 88/627/EEC, O.J. L 348, at 62 (1988) (describing the information to be published when a major holding in a listed company is acquired or disposed of).

41. *See* Council Directive No. 93/22/EEC, O.J. L 141 at 27 (1993) (relating to investment services in the securities field).

42. *See* Commission Communication, *Upgrading the Investment Services Directive No. 93/22/EEC*, COM (2000) 729 Final (Nov. 2000).

innovative market instruments.[43] The deadlines set in the FSAP were unachievable unless a new approach was found. Member States also expressed concerns about the lack of consistent implementation of Community legislation. At the end of the 1990s, more than forty public bodies with very different structures were responsible at Member State level for supervising the securities markets. Thus, reform was needed to ensure consistent implementation and a convergence of the structures and responsibilities of regulatory and supervisory authorities. This was the picture in the Union's securities markets. In other financial services sectors (notably banking, financial conglomerates and insurance) there were fewer problems but here, too, the pace of change was beginning to put great stress on the legislative system while new developments (such as the growing market share of financial conglomerates) increasingly blurred traditional distinctions between financial services sectors and the legislations that covered them.

B. *Regulatory Reform in Financial Service*

The Committee of Wise Men under Baron Alexandre Lamfalussy[44] was asked to focus on the functioning of regulatory processes for securities at the level of the EU and to identify and provide solutions to weaknesses in the system. Three important considerations would underpin their work. First, regulatory re-

43. *See* Council Directive No. 2001/24/EC. O.J. L 125, at 15 (2001) (discussing reorganization and winding up of credit institutions); Council Directive No. 2001/17/EC, O.J. L 110, at 28 (2001) (discussing reorganization and winding up of insurance undertakings); Amended Proposal for a Thirteenth European Parliament and Council Directive on Company Law Concerning Takeover Bids, O.J. C. 378, at 10 (1997). The adoption of the Investment Services Directive ("ISD") took five years of intensive negotiations. Two directives governing the insolvency rules for insurance and credit institutions were adopted in 2001, after fourteen and sixteen years, respectively, of negotiations at Council and European Parliament levels. Finally, the proposed Take-over Directive after more than twelve years of negotiations was rejected by the European Parliament in July 2001. *See infra* nn.44-45 and the accompanying text.

44. General Manager of the Bank for International Settlements in Basle (Switzerland) from 1985 to 1993 and President of the European Monetary Institute (the predecessor of the European Central Bank) from 1994 to 1997. The other appointed members of the Committee were: Cornelius Herkströter, former Chief Executive Officer ("CEO") of "Shell"; Luis Angel Rojo, former Governor of the Spanish Central Bank; Bengt Ryden, former President of the Stockholm Stock Exchange; Luigi Spaventa, President of the Italian Securities Regulator ("CONSOB"); Norbert Walter, Director of Economic Studies at Deutsche Bank; and Sir Nigel Wicks, former Chairman of the Economic and Monetary Committee.

form should take place within the existing boundaries of the EC Treaty, since any change would require an intergovernmental conference of all Member States and thus definitively rule out the timetable established in the FSAP. Second, the Committee of Wise Men themselves decided that it would be premature to consider a possible single European Securities Regulator, perhaps along the lines of the U.S. Securities and Exchanges Commission, since it would raise complex and politically controversial issues and would certainly not be achievable before the FSAP's 2005 deadline.[45] A third important consideration arose from the need to maintain the delicate institutional balance between the Council of Ministers, the European Parliament, and the European Commission. As discussed above, legislative power is entrusted to both, the Council and the Parliament, while executive powers (and hence, comitology powers) are fully in the hands of the Council, which it may sub-delegate to the Commission under the detailed conditions defined by the Council alone. Among these conditions is the possibility given to the Council — but only to the Council — to block the adoption of implementing rules by the Commission. Thus, the Parliament is involved in the co-decision procedure in defining the implementing powers conferred on the Commission but has no power to control the way these powers are exercised, provided they are exercised legally. For these reasons, the Parliament has often been reluctant to grant implementing powers in basic legislation. This issue of parliamentary powers was to become of major importance when the Committee's recommendations were made.

1. The Four Level Approach

The Committee concluded that the "challenges facing the creation of an integrated securities market in Europe are that the basic legislation is not in place; that there is still insufficient prioritization; that the present system cannot produce quickly or flexibly enough the type of legislation that modern financial markets require; and that inconsistent implementation is severely handicapping the emergence of a pan-European mar-

45. *See* Comitology Report, *supra* n.22, at 33. The Committee also stated in its report that if the four level approach was not successful: "it might be appropriate to consider a Treaty change, including the creation of a single EU regulatory authority for financial services generally in the Community." *Id.* at 41, sec. 5.

ket."[46] The Committee considered that regulatory reform was necessary for the FSAP to be delivered on time. The Committee's central recommendation to deal with this set of problems was a four-level regulatory approach.

a. Level One

Level one was defined as legislation adopted by the European Parliament and the Council in their role as co-legislators on a proposal of the European Commission. Consistent with the Commission's subsequent *Governance White Paper*, level one legislation would take the form of framework directives. Thus, the European Parliament and the Council would have to agree on the basic policy options, but would not need to reach agreement on every technical detail. This would allow the entire process for securing agreement under co-decision to be accelerated. Technical adaptation of Community securities legislation would no longer need to pass through a full co-decision procedure. There were no recommendations as to the boundaries between framework legislation at level one and technical implementing rules at level two. Instead, the Committee opted for a pragmatic and evolutionary path leaving responsibility for agreeing that decision to the co-legislators.[47]

b. Level Two

The objective of the second legislative layer was to fill in the technical details of the level one framework legislation. The European Parliament and the Council would in each directive agree by co-decision to confer implementing powers on the European Commission. The Commission would draft implementing rules, having consulted an independent advisory committee of national securities regulators and the Committee of European Securities Regulators ("CESR"), which was to be established along the lines of the Forum of European Securities Committees ("FESCO"), created in 1997. Their advice would be based on their day-to-day experience and expertise of complex securities markets issues. When preparing its advice to the European

46. *See id.* at 18.

47. *See id.* at 20 (stating that "the substantive content of what should be delegated to the Level 2 procedure would *in every case* be agreed by the Council of Ministers and the European Parliament on the basis of the European Commission's Level 1 proposal. This is a crucial point and a key democratic safeguard").

Commission, CESR would consult market participants, consumers (investors), and end users (security issuers) in a continuous and open process, including through the use of the Internet. The European Commission would assess the technical advice submitted to it and draw up draft implementing rules. In accordance with comitology rules, the Commission would formally seek the views of national governments. For this purpose, a regulatory committee, the European Securities Committee ("ESC"), was to be set up comprising representatives of Member States' finance ministries. The Committee would serve as a forum for feedback from Member States and would formally vote on Commission proposals in conformity with the comitology decision.[48] Within the limits of the EC Treaty, the European Parliament was to be kept informed of the work of the ESC and, in accordance with the existing comitology framework, have a right of oversight. If draft implementing rules were considered as exceeding the implementing powers provided for in level one legislation, the Parliament could adopt a resolution stating that the Commission had exceeded its powers and requiring the Commission to re-examine its draft or state the reasons why it chose not to act in conformity with the resolution.

c. Level Three

Levels one and two create binding Community law. At level three, in addition to the technical advice given in response to Commission mandates on implementing measures, the CESR would have two further tasks: first, to improve consistency in the day-to-day implementation of Community law; and second, to achieve greater convergence of supervisory practices across all EU Member States. Importantly, however, the level three activity would not be legally binding; it could become mandatory only as and when national legislation is passed. The Committee made several recommendations as to how consistency among national security regulators could be improved. Non-binding guidelines could be agreed on with respect to administrative practices; joint interpretive recommendations could be developed; a comparison and review of regulatory practices could be established in order to define best practice throughout the EU; and periodic "peer reviews" of administrative and regulatory practices in

48. *See* Council Decision No. 1999/468/EEC, O.J. L 184/23, at 5 (1999).

Member States would be instigated, the results of which would be reported to the Commission and European Securities Committee. These initiatives were not intended to substitute for technical implementing rules adopted at level two but rather, to complement them. Indeed, the central motivation of the Committee's level three recommendations was to achieve greater convergence between national supervisory and regulatory practices. For the same reason, the Committee underlined the importance of each Member State identifying a single national regulator.

d. Level Four

Traditionally, the role of the European Commission as a "guardian of the Treaty" has been to enforce existing Community law, ultimately with the option of initiating infringement procedures against Member States who fail to comply with Community law. Such cases might be relatively straightforward (for example, the non- or partial, transposition of Community directives).[49] However, complex cases are more frequent (as when national law or national administrative practices contradict Community directives or the fundamental freedoms of establishment;[50] services;[51] and capital under the EC Treaty).[52] Infringement procedures against a Member State have, to a great extent, depended on a complaint by the private sector. The Committee argued that in the future, and without prejudice to the Commission's responsibilities, national regulators should play a more prominent role in ensuring that legitimate market access becomes a reality and that effective investor protection be enforced.

2. Next Steps

The Final Report of the Committee of Wise Men had no legal status: implementing its recommendations depended, ultimately, on an agreement between the three European Institutions. Each reacted in different ways. The Council lent its over-

49. *See* Luxembourg v. Commission, Case C 430/98, [1999] E.C.R. I-4-5 (discussing partial non-transposition of ISD).

50. *See* Consolidated EC Treaty, supra n.4, art. 43, O.J. C 340/10, at 57 (1997), 37 I.L.M. at 61 (ex art. 52).

51. *See id.* art. 49, O.J. C 340/10, at 195 (1997), 37 I.L.M. at 57 (ex art. 59).

52. *See id.* art. 56, O.J. C 340/10, at 199 (1997), 37 I.L.M. at 61 (ex art. 73b).

all political support, but sought to add a "braking mechanism" on the cosmetology process with respect to what it described as "particularly sensitive issues." The European Commission was very positively disposed towards the Committee's proposals but increasingly became embroiled in the institutional disagreement that resulted from the response of the Council and the Parliament. For, indeed, it was the European Parliament that had perhaps the most fundamental concerns, notably relating to the Committee's recommendations with respect to level two measures.

a. The "Braking Mechanism"

When, in the Stockholm Resolution, the Council accepted the four level approach as a way of achieving a more effective securities market regulation in the EU, it did so by seeking to reinforce the role of Member States at the stage when the Commission prepares level two implementing rules.[53] In this respect, the Stockholm Resolution noted that "the Commission has committed itself, in order to find a balanced solution for those cases of implementing measures in the field of securities markets acknowledged in the light of discussions to be particularly sensitive, to avoid going against predominant views which might emerge within the Council as to the appropriateness of such measures."[54] The significance of this sentence is explained by the procedure for adopting implementing measures. It is the Commission's responsibility to formally prepare draft-implementing measures and to submit them to the ESC. The ESC must approve those measures by qualified majority[55] in the absence of which, the Commission shall refrain from adopting an implementing measure but instead, submit[56] it to the Council of Ministers. The Council of Ministers could either adopt the mea-

53. *See* EUROPEAN COMMISSION, REPORT ON THE IMPLEMENTATION OF THE 2001 BROAD ECONOMIC POLICY GUIDELINES (2001). Full text of the report is *available at* http://europa.eu.int/comm/economy_finance/publications/european_economy/implement2001_en.htm.

54. *See* Stockholm European Council, *Resolution on More Effective Securities Market Regulation* (March 23, 2001), *available at* http://europa.eu.int/council/off/conclu/.

55. *See* Consolidated EC Treaty, *supra* n.4, art. 205, O.J. C 340/10, at 264-65 (1997), 37 I.L.M. at 126-27 (ex art. 148) (stating that votes that Member States' representatives cast in the European Securities Committee should be weighted in the future in the same way as in the Council of Ministers).

56. *See* Council Decision No. 1999/468/EC, O.J. L 184/23, at 23 (1999).

sure or again, oppose the draft by a qualified majority. However, in the absence of a decision to adopt or oppose the measures within a period of three months, the Commission could in principle adopt the draft implementing measures. It is likely in such circumstances that a decision would usually be taken along the lines proposed by the Commission. Member States would have to find a qualified majority within the Council to block a draft implementing measure. It is here that the wording of the Stockholm Resolution becomes important. The Council could, in the case of "potentially sensitive matters", oppose the Commission's draft implementing measures with only a simple majority of Member States, despite the Commission's legal entitlement to adopt the measures. However, the Stockholm Resolution does not define what type of measure falls within the category of "potentially sensitive matters," specifying only that, on a case-by-case basis, the Council and Commission must agree on their definition.

b. The European Parliament's Reaction

In the Stockholm Resolution, Heads of State and Government recalled the institutional role attributed to the European Parliament. The existing comitology requirements were stated: the requirement for regular information from the Commission to the European Parliament and its right of oversight to verify if the European Commission has exceeded its powers in relation to particular draft-implementing measures. As noted above, the Parliament was not given the power to block the adoption of implementing rules. Certain members of the European Parliament immediately expressed their reservations about the Stockholm Resolution arguing that it disturbed the institutional balance of powers. While the idea of regulatory reform to accelerate the decision-taking process was endorsed, there were concerns about the exact level two model proposed by the Committee, and with regard to its own control powers in the process. The European Parliament, therefore, looked for equivalent powers to the Council arguing that if the Council were able to exercise "control" on the Commission (including the right effectively to block the adoption of implementing rules at level two), the Parliament also wanted that power.[57] The Parliament argued

57. *See* European Parliament, *Resolution on the Final Report of the Committee of Wise*

that following a resolution opposing the contents of particular implementing rules at level two, the Commission should commit itself to withdrawing the draft and submitting a new proposal under the co-decision procedure. Such a "call back" provision would have impinged on the Commission's right of initiative, disturbed the institutional balance, and thus put into question the basis on which the Committee had made their recommendation. It would also have required changes to the "hard core" of the comitology framework (in particular the Comitology Decision).

c. The Commission's Position

The Commission had reacted positively to the Committee's recommendations and had urged their speedy adoption to allow work to proceed quickly. The European Commission quickly adopted Decisions by which the two Committees proposed in the Committee's Report were established.[58] For level two actions, the ESC is comprised of high-level representatives of the Ministries of Finance under Commission chairmanship and a Commission-staffed secretariat. It will assume its regulatory functions under the comitology framework only when the relevant (level r5 one) directives are adopted in co-decision procedure (Prospectuses and Market Abuse are at an advanced stage). At present, therefore, the ESC acts purely as an advisory committee to the European Commission. For level three actions, the CESR enjoys an independent status reflecting the fact that its members — the national securities regulators — are also independent within their respective EU Member States. The role of this (supervisory level) Committee is to advise the Commission (either at the Commission's request, or at the Committee's own initiative), on the preparation of draft-implementing measures in the field of securities legislation. The Commission is represented at CESR meetings and participates in all its debates. The Committee is chaired by a Member State representative elected from among its members.[59] It has its own secretariat principally based

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Men on the Regulation of European Securities Markets, O.J. C 343, at 43 (Dec. 5, 2001); European Parliament, *Resolutions*, O.J. C 21 E, at 341 (Jan. 24, 2001).

58. *See* Commission Decision No. 2001/52/EC, O.J. L 91, at 43 (2001) (establishing Committee of European Securities Regulators). *See also* Commission Decision No. 2001/528/EC, O.J. L at 45 (2001) (establishing European Securities Committee).

59. *See* Committee of European Securities, Press Release, CESR/01-003, Septem-

in Paris and it meets every three months. The Commission has taken great care to ensure that, for its part, no change in the institutional balance has resulted from the Stockholm Resolution. The Commission remained fully supportive of the idea of an effective democratic control by the European Parliament on behalf of the European citizens but recognized that a "call back" disturbed the institutional balance and would require Treaty changes. Indeed, the Commission's political sympathy for the Parliament's position was clear and was later unequivocally underlined in its *Governance White Paper*[60] calling for "adjustments of the responsibilities of the Institutions, giving control of executive competence to the two legislative bodies" and for a modification of the relevant comitology provision in the EC Treaty at the next Inter-Governmental Conference.[61] It had quickly become apparent that the Parliament's reaction would not allow early progress and it fell to the Commission to enter into informal (and subsequently formal) discussion, to seek to unblock the debate. Discussions took place over nearly a year between Commissioner Bolkestein (responsible for Internal Market and Taxation issues) and the Economic and Monetary Affairs Committee chairman, Mrs. Randzio-Plath. A final compromise emerged in February 2002. The European Parliament did not secure the right to "call back" level two measures but received institutional safeguards from the Commission to preserve its position in future institutional discussions. Commission President Romano Prodi made a solemn declaration (recorded in the minutes of the European Parliament).[62] The European Parliament subsequently adopted a "Resolution on the Implementation of Financial Services Legislation"[63] based on the report of one of its members, Karl von Wogau. The Council accepted the outcome

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ber 19, 2001), *available at* http://www.europefesco.org/v1/default.asp). The current chair of the Committee is Mr. Arthur Docters van Leeuwen, Chairman of the Dutch Securities Regulator (*Autoriteit-Financiele Markten*).

60. *See Governance White Paper, supra* n.23.

61. *See* Consolidated EC Treaty, *supra* n.4, art. 202, O.J. C 340/3, at 264 (1997), 37 I.L.M. at 126 (ex art. 145).

62. *See* European Parliament, *Resolution on the Implementation of Financial Services Legislation*, P.E. 313.863/1, at 45 (2002). *See also* http://europa.eu.int/comm/internal_market/en/finances/general/02-44.htm (building on a previous letter of October 2, 2001 from Commissioner Bolkestein to Mrs. Randzio-Plath during their bilateral discussions).

63. *See* European Parliament, *Resolution*, P.E. 313.832/1, at 43 (2002).

of these discussions. A key element of this compromise lay in a so-called "sunset clause" to be inserted in each new financial services directive. The Commission declared its readiness to accept the Parliament's wish to time-limit the conferral of implementing powers upon the Commission in each Directive that falls under the new approach. The European Parliament will introduce clauses (as it is entitled to do as co-legislator) by which the Commission's powers will be limited to four years from the entry into force of each relevant directive. However, the implementing powers for the Commission will be renewable and any level two measures already adopted will not be affected. The European Parliament can thus monitor whether the Commission respects all its other commitments while clearly staking out its position in the intergovernmental conference for a future right to "call back" level two measures. The Commission confirmed "its political willingness to endeavour that the Parliament benefits from equivalent treatment" and signalled "its commitment to take the utmost account of the Parliament's position and any resolutions that it might adopt with regard to implementing measures exceeding the implementing powers provided for" in level one measures, as well as its "aim of reaching a balanced solution in such cases." There is, however, no legal commitment on behalf of the Commission to withdraw a draft-implementing measure if the European Parliament does not agree with its contents. The European Parliament will have three months after the first transmission of draft-implementing measures to react. (The Commission committed itself to sending the first draft of implementing measures at the same time to the Parliament and to the Member States ahead of a future ESC vote). The Commission also committed itself to full transparency with regard to the European Parliament until the final adoption of level two measures under the comitology procedure and underlined the need for wide public consultation before draft-implementing measures are drawn up. In practice, most consultations will be organized by CESR when consulting on the technical advice it will give on level two measures. The establishment of a market participants panel will reinforce this earlier, broader, and more systematic consultation by CESR.

C. *State of Play*

This understanding with the Parliament has undoubtedly

greatly improved the political ambience and the prospects for accelerating agreement on many FSAP initiatives. At the Barcelona Summit of Heads of State and Government in March 2002 the progress was welcomed and the implementation of the FSAP and the achievement of fully integrated markets by 2003 were again underlined.[64] In addition, the European Parliament and the Council of Economic and Finance Ministries were urged to adopt, as early as possible in 2002, a number of important draft Directives.[65] The Commission, over the last twelve months, has undertaken ten open consultations on various proposals including two two-day hearings and two Internet-wide consultations on the reform of the ISD[66] and reform of transparency requirements for publicly traded companies.[67] The two committees (ESC and CESR) are now in operation. Informal requests for technical advice on a wide range of issues have been made to CESR by the Commission in order to allow more preparatory time before formal mandates are issued following agreement of the Prospectuses and Market Abuse directives. Most recently however, perhaps the most important development has occurred. A political agreement to broaden the approach applied to securities to the whole financial services sector was agreed in principle by the Commission and finance ministers.[68] The position of the European Parliament is not yet known. However,

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64. *See* Barcelona European Council, Presidency conclusions, E.U. BULL., no. 3, at 7 (2002), *available at* http://europa.eu.int/council/off/conclu/.

65. The proposals relating to Collateral (financial securities) (O.J. C 180 E/26.6.2001; COM (2001) 168); Market Abuse (O.J. C 240 E/28.8.2001; COM (2001) 281); Distance Marketing of Financial Services (O.J. C 385/11.12.1998; COM (1998) 468), Financial Conglomerates (O.J. C 213 E/31.7.2001; COM (2001) 213); Prospectuses (O.J. C 240 E/28.8.2001; COM (2001) 280; O.J. C 272/1.9.1998; COM (1998) 451); Pension Funds (O.J. C 96 E/27.3.2001; COM (2000) 507; and the International Accounting Standards Regulation (O.J. C 154 E/29.5.2001; COM (2001) 80.

66. The entire consultation process can be found on the website of the Directorate General for the Internal Market *at* http://europa.eu.int/comm/internal_market/en/finances/mobil/isd/index.htm

67. Council Directive No. 2001/34/EC, O.J. L 184, at 1 (2001) (concerning the admission to official stock exchange listing and information to be published on securities). This directive codified — without amending anything in the substance of the provisions — two directives: Council Directive No. 82/121, art. 48 (1982) (regarding information to be published on a regular basis by companies the shares of which have been admitted to official stock-exchange listing) and Council Directive No. 88/627, art. 348, at 62 (1988) (concerning information to be published when a major holding in a listed company is acquired or disposed of).

68. Agreed by Ministers in the Ecofin Council on July 12, 2002. *See What's New on Europa?*, *at* http://europa.eu.int/geninfo/whatwasnew/072002.htm.

work is now underway to consider the changes that will be needed to the EU's present committee structures.[69] Final decisions on this work are expected in the next few months.

CONCLUSION

The progress made over the past two or three years both, in relation to the procedural arrangements and the implementation of the FSAP, has been remarkable. How effectively the four level approach is, will be monitored by a recently established inter-institutional group.[70] Significant reform has been possible despite the need to remain within the present Treaty framework. Indeed, the discussions themselves and the arrangements that have been agreed to may have helped pave the way for institutional changes to be made at the next Intergovernmental Conference in 2004. The recent moves to extend the four level approach to other financial services sectors tend to confirm this view even though, at the time of writing, the debate is not yet concluded nor have discussions begun with the European Parliament which may well recall their earlier institutional concerns. What is undeniable is that, without profound changes to the way the EU legislates in the financial services sector, the burden of outdated legislation and slow-moving procedural arrangements remains. This will undoubtedly inhibit the Union's progress toward its ambition of greater economic integration and toward becoming the most competitive economy in the world.

69. Discussions are taking place within the Economic and Finance Committee structure.

70. *See supra* n.68.