# An introduction to European Financial Law

*Presentation by*

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# I. Rationales for regulatory intervention in the european financial system

## A. Sector specific regulatory intervention

Despite the “deregulation process” of the 1980ies and 1990ies, the european financial sector is again heavily regulated. Sector specific regulatory intervention in the financial system, deriving from **european financial law,** serves several aims:

**(1)** The basic reason of regulatory intervention in the financial system is the **safeguarding of its stability**, which can be threatened by the occurrence of so-called 'systemic crises'. Within this framework, five individual –but closely interconnected- policy requirements develop:

# I. Rationale for regulatory intervention (2)

**(a)** The first requirement is the *safeguarding of the stability of the banking system* from the possibility of the occurrence of chain bankruptcies of banks. In order to satisfy this demand, european financial law has introduced rules concerning:

- The licensing
- The prudential supervision of banks (mainly through capital adequacy rules),
- the winding-up and liquidation of insolvent banks, and
- explicit deposit guarantee.

***The sum of the measures and mechanisms which are established for the satisfaction of the requirement in question make up the so-called 'safety-net of the banking system'.***

# I. Rationale for regulatory intervention (3)

**(b)** The second requirement is to *ensure the stability of capital markets*, which may be disrupted either by a sudden and major fluctuation of the prices of financial instruments traded on them, or because of the bankruptcy of a financial intermediary providing investment services in them. The satisfaction of this requirement is sought by the adoption of rules concerning:

- the proper operation of markets and infrastructures for trading in financial instruments;
- the licensing, prudential supervision and corporate governance (including internal audit mechanisms) of financial intermediaries providing (on an individual or collective basis) investment services in capital markets.

# I. Rationale for regulatory intervention (4)

**(c)** The third requirement is the *safeguarding of the stability of the market for the provision of private insurance* from the possibility of the bankruptcy of undertakings which provide insurance and re-insurance services. The satisfaction of this requirement is sought by the establishment of rules concerning the licensing and prudential supervision of insurance undertakings.

**(d)** A fourth requirement (much highlighted recently) is the *safeguarding of the stability of the financial system (as a whole)* from the possibility of the occurrence of generalised financial crises in the economy which are due to the undertaking of excessive risks by the so-called "financial conglomerates" composed of banks, insurance undertakings and investment firms. The satisfaction of this requirement is sought through the adoption of rules concerning the supplementary prudential supervision of these groups.

# I. Rationale for regulatory intervention (5)

**(e)** The fifth requirement consists in *ensuring the smooth operation of payment and settlement systems*. The danger to the systems in question consists in the transmission of liquidity and/or solvency problems from one member of the system to other members, with all the systemic effects that this can entail. Control of exposure to this risk and the taking of measures to reduce it are carried out in the framework of the oversight of the payment and settlement systems.

# I. Rationale for regulatory intervention (6)

**(2)**The second reason of regulatory intervention in the financial system is to **ensure the efficiency of capital markets**, that is the optimal allocation of own and borrowed funds drawn upon on them, as well as the protection of investors in financial instruments. This requirement is satisfied by the introduction of rules in connection with:

# I. Rationale for regulatory intervention (7)

- The obligations imposed on undertakings wishing to attract (own and/or borrowed) funds from capital markets (eg., terms and transparency in the listing of financial instruments on capital markets, periodical provision of information to investors)
- Transparency of the transactions carried out during the trading of financial instruments in capital markets
- The avoidance of practices leading to distortions on the terms of operation of capital markets (such as market manipulation and insider trading)
- Protection of the rights and interests of investors in listed companies in view of takeover bids
- Uniform presentation of financial statements for listed companies

# I. Rationale for regulatory intervention (8)

**(3)** The third reason of regulatory intervention in the financial system consists in **ensuring the protection of consumers** transacting with financial intermerdiaries. The policy requirements in this case concern the elimination of the asymmetry of information potentially existing between the contracting parties and in dealing with the potential reduced negotiation capacity of the consumer. For this reason rules are adopted by which the following are sought:

- The provision of adequate information to consumers in connection with the content of the contracts they conclude (both prior to the contract and during its term)
- The prevention of unfair commercial practices
- The elimination of abusive terms
- The possibility of a recourse either to justice on the part of consumers though collective actions or to out-of-court dispute settlement systems

# I. Rationale for regulatory intervention (9)

**(4)** The fourth reason consists in the **prevention of the use of the financial system for the commission of financial crimes**, such as, mainly, money Laundering and terrorist financing. Within this framework rules are established on the control of transactions carried out (with a view to locating 'suspicious transactions') and the forwarding of information to the competent authorities.

# I. Rationale for regulatory intervention (10)

## B. Horizontal regulatory intervention

Financial intermediaries are also subject to regulatory intervention for *rationales underlying also the intervention in the activity of other groups of service providers*, as reflected in the provisions of (indicatively) the following areas of european and domestic law:

- company law,
- competition law,
- general consumer protection law,
- data protection law,
- taxation law,
- labour and social law.

# I. Rationale for regulatory intervention (11)

## C. Prohibited or incompatible (with the internal market) rationales

Unlike the practice which is common in economically developing and less developed states, regulatory intervention in the financial system (particularly in the banking system) for **reasons of economic and social policy**, are either prohibited or incompatible with the common market. Indicative examples of this form of regulatory intervention are:

1. The imposition on financial intermediaries of restrictions in connection with the geographical range of their activities
2. The imposition on credit institutions of restrictions in connection with the provision of investment services)
3. The introduction of upper limits on the interest rates on loans and lower limits on the interest rates on banks' deposits
4. The imposition on credit institutions of the obligation to invest a percentage of their deposits in specific sectors of the economy (usually on privileged terms and with subsidisation of the interest rate) and/or in bonds issued by the state (in order to ensure the funding of public expenditure)

# I. Rationale for regulatory intervention (12)

Based on the above considerations, two concluding remarks can be made

1. European financial law is a sub-total of the rules applying to financial intermediaries, capital markets and financial infrastructures
2. European financial law can be categorised into:
   - European banking law
   - European capital markets law
   - European private insurance law
   - European financial conglomerates law
   - European payment systems law
   - European financial consumer protection law
   - European financial crime law
   - European accounting law for (unlisted) credit institutions

# II. Basic features of European Financial Law (1)

1. **Legal sources**: Treaty on the establishment of the European Community (provisions on freedoms of establishment and provision of services, single market)

2. **Regulators**:

- European Parliament and Council (Regulations and Directives)
- European Commission (Recommendations)
- *New, sector specific:* European Commission (Lamfalussy procedure – level 2 Regulations and Directives – see below under III – 2)

3. **Supervisors**: national authorities (the ECB is not a financial supervisor)

# II. Basic features of European Financial Law (2)

4. **Important milestones**

- adoption of the Single European Act (1987)
- liberalization of capital flows (1990)
- establishment of eurozone (1999)
- Financial Services Action Plan (FSAP) (1999)
- Lisbon Agenda (2000)
- Introduction of banknotes and coins in euro (2002)
- White Paper on Financial Services Policy that looks ahead for the period 2005-2010 (2005)

# II. Basic features of European Financial Law (3)

5. **Main principles**

5.1 **with regard to regulation:**

- **Minimum harmonisation of rules**
- **Partial harmonisation of rules**

5.2 **with regard to the supervision of financial intermediaries**

- Mutual recognition of national rules, leading to home country supervision
- Limited responsibilities assigned to host country authorities (equity principle)
- Supervision of financial groups: consolidation (homogeneous groups of credit institutions and investment firms), solo-plus (insurance groups and financial conglomerates)
- National treatment on the basis of reciprocity for financial intermediaries from third countries

# III. Selected recent developments

## 1. BANKING SUPERVISION

### 1.1. Proposal for a Directive concerning the new capital requirements regime for credit institutions and investment firms (1/2)

- OBJECTIVES: The proposal reflects the flexible structure and the major components of the Basel II Accord, but has been tailored to the specific features of the EU market. The new framework has been developed over five years, with unprecedented levels of stakeholders' consultation in the EU. The resulting framework will promote the safety and soundness of financial institutions while fully reflecting the differing investments in risk management techniques by cretid institutions and the differing risk profile of their customers.
- SPECIFIC POINTS:

1. Capital requirements for credit risk will become much more risk-sensitive. Instead of the current 'one-size-fits-all' approach, the proposed new framework will consist of three different approaches allowing financial institutions to choose the approach most suited to them: standardised, foundation or advanced.

# 1. BANKING SUPERVISION

## 1.1. Proposal for a Directive concerning the new capital requirements regime for credit institutions and investment firms (2/2)

SPECIFIC POINTS:

2. Capital requirements will be expanded to cover 'operational risk'

3. The new rules will comprise a new 'supervisory review process' (the so-called 'Pillar 2'). This will require financial institutions to have their own internal processes to assess their capital needs and allow for supervisors to evaluate institutions' overall risk profile to ensure that they hold adequate capital.

4. The new rules will also require credit institutions to disclose certain information publicly in order to increase the levels of 'market discipline' supporting the soundness and stability of financial institutions (the so-called 'Pillar 3').

# 1. BANKING SUPERVISION

## 1.2. Credit Rating Agencies (1/2)

- In February 2004 the European Parliament adopted an Own Initiative Report on the regulation of Credit Rating Agencies (CRAs) in Europe. The report was prompted by the role of principle CRAs in recent financial scandals.

- The paper is highlighting the importance and the role of ECAIs (External Credit Assessment Institutions) under the proposed Capital Adequacy Directive.

- The report calls the Commission to develop possible legislative proposals for CRAs

# 1. BANKING SUPERVISION

## 1.2. Credit Rating Agencies (2/2)

- In March 2004 the Commission presented the four key issues which need to be addressed in relation to CRAs:
  1. Potential conflicts of interest
  2. Transparency of methodologies
  3. Treatment of CRAs' access to inside information
  4. Concentration in the industry

- On that basis, in June, the Commission asked CESR to provide technical advice by April 2005

- The first part of the process was the Call for Evidence on possible measures in which CESR outlined possible areas of work under the four headings above

# 2. CAPITAL MARKETS REGULATION

## 2.1. Lamfalussy Process (1/2)

### 2.1.1. Financial Markets

It consists of four levels:

**Level 1**

Community legislation adopted by the Council and the European Parliament, upon a proposal by the European Commission, under the co-decision procedure: Legislation should be based only on framework principles and definition of implementing powers to the Commission

**Level 2**

Community legislation adopted by the Commission to lay down the technical details for the principles agreed at Level 1 under the so-called Comitology Procedure.

Technical Advice prepared by the CESR; following mandates issued by the Commission and based on consultation with market users. Favorable vote of Member states as represented in the ESC.

European Parliament may adopt resolutions a) within three months on the draft implementing measures b) within one month after the vote of the ESC if level 2 measures go beyond implementing measures.

# 2. CAPITAL MARKETS REGULATION

## 2.1. Lamfalussy Process (2/2)

**Level 3**

CESR coordinates the necessary actions to facilitate consistent day-to-day implementation of rules of Levels 1 and 2. CESR may issue for this purpose guidelines and common, but non-binding standards.

**Level 4**

Commission checks compliance of Member States laws with the EU legislation. If necessary, it takes legal action against Member States before the Court of Justice.

### 2.1.2. Banking Sector

The Lamfalussy Process has been also extended to the banking sector (as well as in private insurance). The process is the same, the only differences being that:

- instead of CESR, technical advice will be prepared by the Committee of European Banking Supervisors (CEBS) and
- instead of ESC, the European Banking Committee (EBC) is involved at Level 2.

# 2. CAPITAL MARKETS REGULATION

## 2.2. UCITS

Directive 2001/107/EC gives management companies a "European passport" to operate throughout the Union and widens the activities which they are allowed to undertake as non-core services. It also introduces the concept of a simplified prospectus which will provide more accessible, comprehensive information to strengthen investor protection. In order to ensure the effectiveness of the simplified prospectus, the Commission adopted in 2004 a Recommendation in which it clarifies the contents and presentation of some of the elements of information which have to be included into the simplified prospectus.

Directive 2001/108/EC removes barriers to cross-border marketing of units of collective investment funds by widening the scope of assets in which they can invest. UCITS will be permitted to invest not only in listed shares and bonds, but also in bank deposits (cash funds), money market instruments, financial derivatives (i.e. standardized option and futures contracts dealt on regulated markets)

# 2. CAPITAL MARKETS REGULATION

## 2.3. Clearing and settlement in the European Union

### *2.3.1. ESCB-CESR Standards for Securities Clearing and Settlement Systems in the European Union (1/2)*

- Prepared by the ESCB-CESR Working Group, composed of representatives of the ECB and the 15 national central banks of the European Union, as well as representatives of CESR.
- Based on the recommendations for securities settlement systems issued by the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO)
- The 19 standards, aim to increase the safety, soundness and efficiency of securities clearing and settlement systems in the European Union.

# 2. CAPITAL MARKETS REGULATION

## 2.3. Clearing and settlement in the European Union

### 2.3.1. ESCB-CESR Standards for Securities Clearing and Settlement Systems in the European Union (2/2)

- Main objectives of the standards:
  1. To provide a consistent basis for the adequate regulation, supervision and oversight of securities clearing and settlement systems and other relevant securities service providers in the European Union
  2. To enhance the safety, soundness and efficiency of securities clearing and settlement and to avoid systemic risk
  3. To promote the competitiveness of European markets by fostering efficient structures and marketed responses to developments;
  4. To build confidence in the markets by providing strong and reliable rules and to foster the protection of investors and, in particular, retail investors;
  5. To increase the clarity with regard to the identity of the institutions to which the standards are applied.

# 2. CAPITAL MARKETS REGULATION

## 2.3. Clearing and settlement in the European Union

### 2.3.2. European Commission Communication to the Council and the European Parliament : Clearing and Settlement in the European Union - The way forward

OBJECTIVE: Propose a Directive on Clearing and Settlement to complement the market-led removal of the relevant "Giovannini barriers" with a secure legal framework ensuring the freedom to provide securities clearing and settlement services throughout the EU on the basis of common requirements.

SPECIFIC POINTS:

- liberalisation and integration of existing Securities Clearing and Settlement Systems through the introduction of comprehensive access rights at all levels and the removal of existing barriers to cross-border clearing and settlement
- continued application of competition policy to address restrictive market practices and to monitor further industry consolidation
- adoption of a common regulatory and supervisory framework that ensures financial stability and investor protection, leading to the mutual recognition of systems
- implementation of appropriate governance arrangements

## 2. CAPITAL MARKETS REGULATION

### 2.4. MiFi Directive: Directive 2004/39/EC on markets in financial instruments amending Directives 85/6121/EEC and 93/6/EEC and Directive 2000/12/EC and repealing Directive 93/22/EEC (1/2)

SCOPE: The directive shall apply to investment firms and regulated markets and certain provisions shall also apply to credit institutions when providing one or more investment services and/or performing investment activities.

SPECIFIC POINTS:

1. The Directive will give investment firms an effective "single passport" allowing them to operate throughout the EU on the basis of authorization in their home Member State.

2. It establishes a regulatory framework governing the execution of investor transactions by regulated markets, other trading systems and investment firms.

# 2. CAPITAL MARKETS REGULATION

## 2.4. MiFi Directive (2/2)

SPECIFIC POINTS:

3. In the list of investment services and activities for which the single passport is provided are included in the new Directive:

- the investment advice, and
- the operation of Multilateral Trading Facilities.

4. Annex II of the Directive contains the categories of persons which are considered as professional clients for the purposes of the Directive and the criteria to consider an investor as professional client on request. This is important especially with regard to the conduct of business obligations of the investment firms when providing investment services to clients.

## 2. CAPITAL MARKETS REGULATION

### 2.5. Prospectuses: Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (1/2)

OBJECTIVE: To harmonize requirements for the drawing up, approval and distribution of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market situated or operating within a Member State.

MAIN ELEMENTS:

- The Directive introduces a new "single passport for issuers". This means that once approved by the competent authority in one Member State, a prospectus will then have to be accepted everywhere else in the EU. In order to ensure investor protection, that approval will only be granted if prospectuses meet minimum harmonised standards about what kind of information must be disclosed and how.

# 2. CAPITAL MARKETS REGULATION

## 2.5. Prospectuses (2/2)

MAIN ELEMENTS:

- The European Commission has also adopted the Regulation 809/2004, which contains the implementing measures for the application of Directive 2003/71/EC. There is no "one-size fits all" model for prospectuses. The Regulation therefore sets out different requirements for different products, specifying the type of information to be provided to investors in each particular case.

# 2. CAPITAL MARKETS REGULATION

## 2.6. Market abuse: Directive 2003/6/EC on insider dealing and market manipulation (market abuse)

1. This Directive:
   i) Reinforces market integrity
   ii) Contributes to the harmonization of the rules for market abuse
   iii) Establishes a strong commitment to transparency and equal treatment of market participants
   iv) Requires closer co-operation and a higher degree of exchange of information between national authorities, thus ensuring the same framework for enforcement throughout the EU and reducing potential inconsistencies and confusion.
2. The Directive covers both insider dealing and market manipulation with regard to all financial instruments admitted for trading in at least one regulated market in the European Union.
3. According to the Lamfalussy procedure the Commission has already adopted (at Level 2) three Directives and one Regulation providing for the implementing measures of Directive 2003/6/EC.

# 2. CAPITAL MARKETS REGULATION

## 2.7. Investor protection and transparency: Directive 2004/19/EC on the harmonization of transparency requirements with regard to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (1/2).

OBJECTIVE: The Directive upgrades the current level and frequency of the mandatory financial information that issuers have to provide to the markets throughout the financial year.

SPECIFIC POINTS:

1. The Directive requires all securities issuers to disclose to the public periodically:
   i) an audited annual financial report (financial statements based on international accounting standards) and a management report within three months of the end of each financial year
   ii) a half-yearly condensed financial report based on international accounting standards on interim financial reporting as well as an update of the last annual management report.

# 2. CAPITAL MARKETS REGULATION

## 2.7. Investor protection and transparency (2/2)

SPECIFIC POINTS:

2. It upgrades the current requirements on information that is not periodic by requiring from issuers:
   i) to give the public swifter and better information about the material interests of important shareholders
   ii) to provide information to holders of shares and debt securities so as to facilitate participation in general meetings.

3. It also simplifies the requirements that issuers must meet on the use of languages and on the way information is disseminated.

# 2. CAPITAL MARKETS REGULATION

## 2.8. Takeover bids: Directive 2004/25/EC on takeover bids (1/2)

OBJECTIVE: This Directive lays down measures coordinating law, regulations administrative provisions, codes of practice and other arrangements of the Member States, relating to takeover bids for the securities of companies governed by the laws of Member States, where all or some of those securities are admitted to trading on a regulated market.

SPECIFIC POINTS:

The general principles which Member states are obliged to ensure are the following:

1. All holders of the securities of an offeree company of the same class must be afforded equivalent treatment
2. The holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid

# 2. CAPITAL MARKETS REGULATION

## 2.8. Takeover bids (2/2)

SPECIFIC POINTS:

3. The board of an offeree company must act in the interests of the company as a whole

4. False markets must not be created in the securities of the offeree company, of the offeror company or of any other company concerned by the bid

5. An offeror must announce the bid only after ensuring that he/she can fulfil in full any cash consideration

6. An offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities

# 2. CAPITAL MARKETS REGULATION

## 2.9 Adoption of IAS and IFRS at Community Level (1/2)

- In conformity with Regulation EC/1606/2002 from 1 January 2005 all companies listed in the EU have to prepare and other companies may prepare their consolidated accounts in accordance with IAS and IFRS, issued by the IASC and IASB, the successor of the IASC.

- On September 2003, the European Commission by Regulation 1725/2003 adopted all existing IAS into Community law, with the exception of IAS 32 and IAS 39 (Financial Instruments).

- IAS 32 and IAS 39 (applying to credit institutions) are still being reviewed by the International Accounting Standards Board (IASB). European banking industry and IASB have ongoing discussions on IAS 39.

# 2. CAPITAL MARKETS REGULATION

## 2.9 Adoption of IAS and IFRS at Community Level (2/2)

- The IASB is examining proposals made by European banks for the introduction into IAS 39 of a hedge accounting method (called interest margin hedge) which would be more closely reflect the way in which these banks conduct their asset/liability management.

- On April 2004, the European Commission adopted the IFRS 1, a standard designed to facilitate the first application of IAS/IFRS (Commission Regulation EC/707/2004).

- On 30 June 2004, the Accounting Regulatory Committee proposed a European Commission Regulation on the adoption of IAS 39 at Community level with the exception of the provisions on the use of the fair value option and certain provisions relating to hedge accounting for the recognition and measurement of financial instruments. The proposed amendment is a direct response to concerns expressed by the ECB, prudential supervisors and securities regulators which fear that the fair value option might be used inappropriately.

# 3. PAYMENT SYSTEMS

## A New Legal Framework for Payments in the Internal Market (1/2 )

- OBJECTIVE: This Directive Proposal deals with the legal framework to be proposed in order to establish a Single Payment Area which – despite of the introduction of the euro – still does not exist. This is an important element for the integration of the retail markets in general and retail financial services markets in particular.

- SPECIFIC POINTS:

1. The definition of Payment Institution (other than credit institutions as defined in Directive 2000/12/EC. Credit Institutions & Payment Institutions called Payment Service Providers).
2. Requirements for access to the taking up and pursuit of the business of payment institutions (authorization, tied agents, place of the head office of the payment institution, organizational requirements, supervision and waive of the application of some provisions).
3. Security of payment services.

# 3. PAYMENT SYSTEMS

## A New Legal Framework for Payments in the Internal Market (2/2 )

- SPECIFIC POINTS:

4. Transparency of conditions for a payment service (prior information, information following the acceptance of a payment order and framework contracts)
5. Irrevocability of a payment order
6. Cancellation of a payment transaction
7. Execution for the full amount
8. Execution times (3 banking business days)
9. Non-execution or defective execution of a payment transaction (liability issues)
10. Unauthorized payment transactions (obligations of the parties, disputed payment transactions and allocation of losses)
11. Out-of-court redress
12. Full harmonization and mutual recognition of the payment service providers (credit institutions and payment institutions)
13. Annex with the listed payment services (provided by credit institutions and/or payment institutions)

# 4. CONSUMER PROTECTION IN RETAIL FINANCIAL SERVICES

## 4.1. Credit for Consumers: Modified proposal for a Directive of the European Parliament on the harmonization of the laws, regulations and administrative provisions of the Member States concerning credit for consumers (1/3)

- OBJECTIVE: To secure harmonization with regard to the credit on offer to consumers by guaranteeing them a high level of protection. All types and forms of credit that are available to private individuals will, in principle, be harmonized.

Directive 87/102/EEC as it stands will be repealed with effect from the adoption of the proposal for a Directive. The proposal introduces significant changes with regard to the existing framework.

# 4. CONSUMER PROTECTION IN RETAIL FINANCIAL SERVICES

## 4.1. Credit for consumers (2/3)

- *SPECIFIC POINTS*:

1. The Directive will not apply to home loans and to credit agreements involving a total amount of credit higher than 100.000 €.
2. Introduction of an obligation to include standard information in any advertisement concerning credit agreements which includes information on the cost of credit.
3. Introduction of the principle of responsible lending, which is meant for the purposes of the Directive as the requirement for the creditor and, where applicable, the credit intermediary, to comply with their obligations as regarding the provision of pre-contractual information as well as the requirement for the creditor to assess the consumer's creditworthiness on the basis of the information provided by the consumer, and, where appropriate, on the basis of a consultation of the relevant database.

# 4. CONSUMER PROTECTION IN RETAIL FINANCIAL SERVICES

## 4.1. Credit for Consumers (3/3)

- SPECIFIC POINTS:

4. Introduction of the obligation to provide detailed information before the conclusion of the credit agreement (e.g. sureties and insurance required, duration of the credit agreement, amount, number and frequency of payments to be made e.t.c.). Specific pre-contractual information is required to be provided for specific credit agreements (e.g. credit agreements involving a total amount of 300 €, credit agreements concluded by no-for-profit associations etc).
5. The proposal includes detailed provisions about the information that must be included in credit agreements, the borrowing rate, the linked transactions, the early repayment, the calculation of the annual percentage rate of charge and the credit intermediaries. The right of withdrawal is fixed to fourteen days.

# 4. CONSUMER PROTECTION IN RETAIL FINANCIAL SERVICES

## 4.2. Unfair Commercial Practices: Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market (1/2)

OBJECTIVE: To contribute to the proper functioning of the internal market and achieve a high level of consumer protection on unfair commercial practices harming consumers' economic interests.

SPECIFIC POINTS:

1. Introduction of a general prohibition of unfair commercial practices. The general rule is that a commercial practice shall be regarded as unfair if:
   a) it is contrary to the requirements of professional diligence, and
   b) it materially distorts or is likely to materially distort the economic behavior with regard to the average consumer whom it reaches or to whom it is addressed.

# 4. CONSUMER PROTECTION IN RETAIL FINANCIAL SERVICES

## 4.2. Unfair Commercial Practices (2/2)

SPECIFIC POINTS:

2. Two categories of commercial practices shall be regarded as unfair in any case:
   a) The misleading commercial practices (actions and omissions) and
   b) The aggressive commercial practices.

The annex 1 of the Directive includes concrete examples of misleading and aggressive commercial practices which are in all circumstances considered unfair.

3. Introduction of a specific provision concerning the codes of conduct. According to this provision the Directive does not exclude the control which Member states may encourage of unfair commercial practices by code owners and recourse to such bodies.

4. Specific provisions about the enforcement of the provisions of the Directive, courts and administrative authorities and penalties.

# 5. FINANCIAL CRIME

## 7.1. Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing (3rd Anti-Money Laundering Directive)

- OBJECTIVE: Further strengthen of the EU's defences against money laundering and terrorist financing.
- SPECIFIC POINTS:

1. Money laundering will be defined as concealing or disguising the proceeds of a wider range of serious offences.
2. Application in all Member States of the updated 40 Recommendations of the Financial Action Task Force (FATF), the international anti-money laundering standard-setter, which are covering not only the laundering of the proceeds of crime but also the financing of terrorism.
3. Set out much more detailed "know your customer" requirements and introduction of a risk-based approach.

- OBSERVATION: Several Member States have not yet implemented the Second Anti-Money Laundering Directive of 2001.

# 5. FINANCIAL CRIME

## 7.2. Regulation Proposal on payer's information accompanying credit transfers and transfers sent by money remitters

- OBJECTIVE: Application in all Member States of the the Financial Action Task Force on Money Laundering (FATF) Special Recommendation VII (SR VII) on wire transfers. (Adopted on 29-30 October 2001)
- SPECIFIC POINTS:

1. The European Union is to be considered a single jurisdiction, i.e. a domestic market (SEPA) in the sense of SR VII
2. Credit transfers and transfers sent by money remitters, where both the payer's payment service provider and the payee's payment service provider are located in the EU [and batch transfers, except those sent by money remitters] shall be accompanied only by the payer's account number or a unique identifier allowing the transaction to be traced back to the payer
3. Credit transfers and transfers sent by money remitters from the EU, to third countries, shall always be accompanied by the payer's name, the payer's account number, the payer's address

# 6. TAXATION ISSUES

## Directive 2003/48/EC on taxation of savings income in the form of interest payments

OBJECTIVE: To enable savings income in the form of interest payments made in one Member State to beneficial owners who are individuals resident in another Member State to be made subject to effective taxation in accordance with the laws of the latter Member State.

SPECIFIC POINTS:

1. The definition of:
   - i) the beneficial owner (Identity and residence of beneficial owners)
   - ii) the of paying agent
   - iii) the competent authority (for Member States and Third Countries)
   - iv) the interest payment
2. The exchange of information (Information reporting by the paying agent and automatic exchange of information between the competent authorities of Member States)
3. Provisions for the withholding tax, the revenue sharing between the Member States and the measures for the elimination of double taxation
4. Transposition deadline of the Directive has passed on 1 January 2004 with application deadline 1 January 2005 (Article 17, paragraph 1&2).

# 7. COMMISSION'S WHITE PAPER (2005-2010)

After a six year "regulatory storm" on financial services (FSAP), a new phase begins with less emphasis on regulation and more emphasis on transposition and enforcement of existing measures. The key policy orientations set out in the Green Paper are:

- consolidation of existing legislation, with few new initiatives
- ensuring the effective transposition of European rules into national regulation and more rigorous enforcement by supervisory authorities
- continuous ex-post evaluation whereby the Commission will monitor carefully the application of these rules in practice – and their impact on the European financial sector
- need to enhance synergies among different public policies (financial services competition, consumer protection) in order to support financial integration