SECURITIES MARKET REGULATION IN THE EU

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EVERYTHING YOU ALWAYS WANTED TO KNOW ABOUT THE LAMFALUSSY PROCEDURE*

KAREL LANNOO

AND

MATTIAS LEVIN

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* But were afraid to ask.

The Centre for European Policy Studies (CEPS) is an independent policy research institute in Brussels. Its mission is to produce sound policy research leading to constructive solutions to the challenges facing Europe. CEPS Research Reports in Finance and Banking review work in progress in the European Union on topics of special interest to the financial and banking sectors.

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EXECUTIVE SUMMARY

One of the fundamental aims of the European Union is to construct an internal market, composed of the home markets of all member states. In order to achieve this, member states have delegated significant powers to supranational community institutions: the European Commission, the European Court of Justice and the European Parliament. At the same time, however, member states subject that delegation of power to significant constraints and retain a considerable amount of responsibility for policies that may affect the running of the internal market. This tension lies at the heart of all discussions concerning the distribution of competence in all policy areas between the European Union on the one hand and the member state authorities on the other hand, and is especially present in securities market regulation.

The means employed to create a single market have changed over the years. From the 1960s to the mid-1980s, the Commission and member states tried to achieve market integration through extensive harmonisation. Such efforts proved extremely slow and ineffective, however, and the EU began in the mid-1980s to follow an approach based on minimal harmonisation and mutual recognition. By and large, this new approach managed to bring about a reasonably integrated internal market by the end of 1992.

By the mid-1990s, however, it became apparent that the new approach had not delivered sufficient results, as significant obstacles remained to the provision of cross-border financial services, particularly in the area of securities markets. This was highlighted by the start of monetary union in 1999. As a result, the EU set itself the objective of updating existing financial regulations and adopting new laws in order to eliminate remaining regulatory obstacles to a pan-European financial market, the so-called Financial Services Action Plan (FSAP). In order to achieve that aim, the EU also agreed to modify the way it enacts laws in the securities market field. These changes are currently being applied to other areas of finance as well.

Thanks to the FSAP and the new regulatory structure, the EU is closer to its goal of achieving an internal market for financial services. Whether it will work remains to be seen, but some problems can already be noted. First, the new legislative procedure is complex, and the consensus around it is fragile. The Commission will need to make a considerable effort to maintain the balance between the different institutions involved, and to rein in its own ambitions. Secondly, the principles on which the new procedure is based are not set in stone, but will continue to vary depending on the circumstances. A continuous evaluation of objectives and achievements is therefore required.

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1. Introduction

The increasing pace of economic integration across borders challenges the traditional concept of national regulation. Nowhere is this discrepancy between the global reach of markets and the national limits of regulation more manifest than in financial markets.

The aim of this paper is explore how the member states of the European Union have grappled with this challenge. It provides an overview of how the overarching aim of constructing an internal market has affected the location of political authority.[1] A first part examines how this discussion has developed generally, while a second part looks at current discussions regarding one of the areas that has been the hardest to integrate: financial services, and more particularly securities markets.

2. Building the Internal Market

One of the fundamental aims of the EU is to construct an internal market, composed of the home markets of all member states. Judging themselves incapable of reaching that goal, member states set up a community, which has been called the European Union (EU) since 1992. They have thereby delegated significant powers of initiation, interpretation, execution and enforcement[2] to two supranational community institutions in particular: the European Commission and the European Court of Justice (ECJ).[3] However, while member states have delegated powers, they nevertheless subject that delegation to significant constraints and they retain a considerable amount of responsibility for policies that may affect the running of such an internal market. This tension is at the heart of all discussions concerning the distribution of competence between the European Union on the one hand and the member state authorities on the other, regardless of the policy area, but this is especially the case in securities market regulation.

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[1] Space limitations do not permit an overview of the basic functioning of the European Union and all its institutions. For a concise description, please consult "How the European Union Works" by the European Commission (2003b) or "The ABC of Community Law", Borchardt (2000)

[2] Unless stated otherwise, the term "enforcement", as used in this study, refers to the need to ensure that EU member states implement and interpret harmonised requirements in a manner that supports the goal of an internal market for securities, and so refers to issues arising between member states, as opposed to matters arising within a member state as a result of non-compliance by a regulated individual or organisation.

[3] Tallberg (2002).

2.1 The Legal Basis

The Treaty establishing the European Community (TEC) prohibits all restrictions to the free movement of goods, services, capital and labour. Member states therefore have the *right of access* to other member states' markets. However, such a right in isolation has historically proven to be insufficient in reining in the member states' ability to impose new barriers to trade. Although the TEC's overarching aim is to construct a single market, it nevertheless provides for a number of exceptions to the free access and movement articles. For example, Art. 30 granted member states the right to impose quantitative restrictions on imports and exports for certain reasons, e.g. health and safety.[4]

In order to minimise the possibility that such restrictions will hamper the internal market, a legal principle known as *mutual recognition* has been developed by the European Court of Justice that reinforces the right of access. Established by the ECJ in the Cassis de Dijon case in 1979, it states that products or services that have been lawfully produced and marketed in one member state are to be granted free access throughout the internal market, without the imposition of further conditions by authorities in other member states.[5] Moreover, the TEC granted the EU the possibility to issue directives to 'approximate', or *harmonise* in common EU parlance, those laws, regulations and administrative provisions that affect the establishment and functioning of the internal market (Art. 94). Nevertheless, the extent to which mutual recognition has been relied upon and the ease with which member states can harmonise laws have evolved over time.

2.2 Extensive Harmonisation – The Classical Approach

On the basis of Art. 94, the European Commission set out in 1968 to harmonise various technical aspects of goods produced in EU member states. Continuing until the early 1980s, this approach was spectacularly unsuccessful. Producing roughly ten directives a year, the chosen method was time-consuming and costly and failed to dent, let alone reduce, barriers to trade.[6] There were many reasons behind this failure to improve market access, notably i) the unanimity requirement for agreeing on legislative acts, ii) excessive ambitions of uniformity at Community level and iii) a lack of political interest by member state ministers.

2.3 The 'New Approach' – Minimal Harmonisation

Frustrated with the lack of improvement in market access, the Commission in 1983 put forward a radically different proposal for dismantling technical barriers to trade in the Mutual Information Directive of 1983. It was directly built on the mutual recognition principle, established by the ECJ, and provided for a more formal process of

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[4] This right has never been a blank cheque, but subject to stringent requirements, as established by ECJ case law. See Pelkmans (1987) for further details.

[5] ECJ, Case 120, 78 of 20 February 1979; see also Pelkmans (1987) and Sun & Pelkmans (1995).

[6] Pelkmans (1987).

consultation and peer vetting before adopting technical standards instead of relying on reaching unanimous agreement on what common standard should apply.[7]

Building on this seemingly unimportant directive, the 1985 White Paper incorporated these principles. It provided that future legislative activity should be limited to harmonising essential measures, beyond which mutual recognition should apply.[8] It put forward around 280 legislative measures that should be harmonised. The White Paper was supplemented by far-reaching changes to the EU's decision-making procedures. The Single European Act (SEA) put forward changes to the treaty, thereby rendering it easier to implement the White Paper's legislative measures. The SEA increased the Community's capacity for action by introducing qualified majority voting instead of unanimity as the basis for adopting measures aimed at accomplishing the internal market (Arts. 95 and 251). Later revisions to the treaty have further changed the decision-making process. A persistent aim of these changes – decided by an inter-governmental conference (IGC) – has been to increase capacity for action. Another aim has been to increase the powers of the European Parliament.[9]

This new approach should be seen as a pragmatic response to defusing the previously 'all-or-nothing' character of harmonisation. First, it opened markets in spite of the continued existence of national regulation and secondly, removed or pre-empted the erection of barriers to trade.[10] It put in place a system where the futile quest for a definite and intellectually clear allocation of political authority was replaced with constructive ambiguity. Regarding the ambiguous element, it is illustrative that the new approach was greeted by member states previously having resisted further market opening as a way of retaining regulatory control over international markets while other member states, having argued in favour of market access, heralded the forces of liberalisation it unleashed.[11] The major accomplishment of the new single market approach therefore is that it defused the political tensions related to further market opening.

By 1992, the new approach had proved its constructive character as well, as member states had adopted the large majority of the measures put forward in the White Paper, thereby taking one step closer to creating an internal market. The major contribution of the new approach was therefore that it brought together those stressing harmonisation as a response to international market forces and those promoting competition among rules as the proper response.[12]

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[7] Ibid.

[8] European Commission (1985).

[9] The treaties governing the European Union have been revised following decisions by three IGCs in Maastricht (1992), Amsterdam (1997) and Nice (2001). A proposal for a more fundamental revision of the treaties was put forward by the European Convention to the member states in June 2003. As of this writing, however, member states have so far failed to agree on the changes put forward by the Convention.

[10] Sun & Pelkmans (1995).

[11] Woolcock (2001).

[12] Ibid.

Box 1. The EU 'passport' for financial services

The EU scheme is frequently termed a 'passport' system. As explained in detail in this study, the 'mutual recognition' principle is at the heart of the EU system: products or services that have been lawfully produced and marketed in one member state are to be granted free access throughout the internal market, without incurring further conditions imposed by authorities in other member states.

An effective mutual recognition system contains the following elements:

1. harmonisation of minimum technical standards to prevent host regulators from refusing to recognise home regulators' requirements;
2. a method to ensure that the harmonised minimum standards are implemented and interpreted consistently in all participating jurisdictions, and the means to oblige non-complying jurisdictions to comply; and
3. a means for regulated individuals or organisations to alert other jurisdictions to non-compliant implementation and/or interpretation without fear of reprisals from regulators.

Each of these elements has its own requirements. For example, the harmonised standards must be sufficiently detailed and complete in order to prevent objections by host regulators arising from lacunae in the harmonised standards. International standards, including the IOSCO Objectives and Principles of Securities Regulation, frequently do not meet this requirement, and so it is necessary to develop them among the participating jurisdictions. As noted in this study, however, requiring a high degree of detail in the harmonised standards may prevent agreement, but insufficient harmonisation also undermines such a system.

With respect to enforcing the implementation and interpretation of harmonised standards in a manner that permits effective mutual recognition, there must be some central or at least coordinated response and penalties for non-compliance. Permitting jurisdictions to withdraw from the scheme, in whole or in part, as an alternative to complying would largely defeat the purpose of the scheme.

In the case of financial services, the mutual recognition principle operates more effectively in some areas than in others. For example, the requirements applicable to investment funds (known as UCITS, or 'undertakings for collective investments in transferable securities') have been subject to effective mutual recognition since approximately 1987, and, as a result, Luxembourg and Ireland have emerged as centres for the design and creation of such products for 'export' to other EU states without additional national regulatory requirements. The single passport also works effectively in banking, introduced as a result of the Second Banking Directive. Banks can offer services and open branches across borders with a single licence.

The regulation of market intermediaries under the Investment Services Directive (ISD), however, has been less successful in reducing host jurisdiction regulation. Host jurisdictions, for example, generally impose additional restrictions on solicitation and implement local conduct of business rules in addition to those of the home jurisdiction. As a result there is a debate as to the effectiveness of mutual recognition in this area. Even so, following the adoption of the ISD in 1993, the provision of services across the border has increased exponentially, as illustrated by the increase in notifications by service providers to host country supervisors.

Mutual recognition has worked the least in the regulation of issuers and securities issuances. Under the current Prospectus Directive, the host jurisdiction may, in recognising a prospectus, require additional information related to the domestic market (including its translation into host country languages and details of local tax treatment, etc.).

Recent EU activity addresses these limitations. The new Directive on Prospectuses, adopted in July 2003 by the European Parliament, will replace the existing Prospectus Directive and Listing Particulars Directive and introduces a single prospectus system for securities issuances in the EU, following the maximum harmonisation approach. The European Commission has also launched an extensive review of the Investment Services Directive in order to complete the single passport for investment firms and released a new draft directive in November 2002. The proposed directive strengthens the home country control principle and retains a role for host jurisdiction regulators in limited areas only, including, with respect to branch operations, enforcing requirements relating to keeping records of services provided and transactions with clients of the branch and for enforcing the business conduct rules.

2.4 Implications for Allocation of Competencies

The new approach embodied in the single market project affected the distribution of power between member states on the one hand and member states and the Community institutions on the other hand.

Delegation Subject to Control[13]

The single market approach has entailed a more significant delegation of power to the supranational institutions, charged with pushing forward policies that contribute to the construction of a single market. Nevertheless, the degree to which power has been delegated differs from one function to another:

- *Policy initiation.* Member states retain considerable control over the Commission's right to initiate policy, even under the 'new approach'. Fundamentally, since its inception in the late 1970s, the priorities set by the European Council (comprising heads of states) exert significant influence on the Commission when setting its priorities. Moreover, the Commission consults member state officials when determining what policy action to take and circulates proposals at the drafting stage to member states for comments. And naturally, a Commission proposal cannot be adopted unless it receives approval by a majority of member states.
- *Policy execution.* As for the Commission's powers to execute policy, by taking decisions that implement EU legislation, member states exert control primarily via the so-called 'comitology system'. This system was created to ensure that member states retained control over the execution of common policies by the Commission. As a result, the Commission has to present draft proposals to committees composed of member state representatives before adopting them. The extent to which member states can exert influence depends on the nature of the committee, for some of them function in a purely advisory capacity. *Management committees* have the right to block proposals and refer them to the Council of Ministers. *Regulatory committees* must approve the proposals put forward by the Commission by qualified majority or refer them to the Council. Overall, comitology allows member states to control the Commission's execution of common policies in a more continuous manner. In their quest to achieve an internal market for financial services, member states have

[13] This section builds on Tallberg (2002).

delegated increasing powers to implementing committees in the area of securities markets, as illustrated below.

- *Policy interpretation by the ECJ.* The ECJ is the most independent of the Community institutions. The little control that member states exert over the ECJ depends on whether the Court interprets treaty rules or EU legislation. If the former, member states have no possibility to control the outcome and have to abide by the decision of the Court. If the latter, member states have the possibility to re-legislate, should they not share the Court's interpretation of a particular directive.
- *Policy enforcement.* The Commission is the 'Guardian of the Treaties' and accordingly member states cannot control the way it monitors member state compliance. The same goes for the ECJ's control of state compliance, where member states cannot reverse the Court's decision unless unanimously agreeing to change the treaty.

In sum, while having delegated substantial powers to the Commission and the ECJ, member states retain methods of controlling the way these institutions initiate, execute, interpret and enforce policy.

Home Country Control

Underpinning mutual recognition is the principle of home country control, i.e. the member state where the goods or service provider has its seat is responsible for carrying out regulation and supervision of the entity. Mutual recognition in general and home country control in particular, however, require that regulatory authorities trust the standards and objectives of the other authority to be equivalent to the ones imposed in their jurisdiction. Host authorities, i.e. the authorities in other member states where the goods or service provider may offer its products, have frequently expressed doubts regarding this equivalence. As a consequence, it has often been difficult to harmonise regulation in the absence of granting host authorities at least some co-authority to supervise the activities of entities from other member states.

Box 2. Enforcement of EU laws

Member states can decide to harmonise the way in which they carry out certain policies, e.g. the regulation of financial companies. Once such harmonisation has been agreed upon, normally via the adoption of a directive, member states are obliged to i) transpose the directive into national law and ii) ensure that it is properly implemented and interpreted.

Ensuring transposition – Infringement procedures

In its capacity as Guardian of the Treaties and together with the ECJ, the Commission is responsible for ensuring that EU laws are properly implemented and applied in member states (Art. 226). Member states are liable for infringements of EU law. If the Commission finds that a member state has failed to fulfil its obligation, it will launch a so-called 'infringement procedure'. It first sends an official letter to the member state, outlining its reasons for considering that the member state infringed EU law and setting a deadline for the member state to comply. If this does not solve the dispute, the Commission or another member state (Art. 227) may bring the case before the ECJ. The ECJ will then investigate the claim and if it finds that the member state has indeed infringed the law, the member state is obliged to amend its legislation. If the member state fails to do so, the ECJ can impose a lump-sum fine or another form of penalty.

Ensuring implementation and even interpretation – Temporary rulings

Member states must ensure that the law, once it is transposed, is properly implemented. In line with the fundamental principle underpinning the construction of the single market, the authority and responsibility to investigate, detect and prosecute breaches of Community law by regulated individuals or firms fall essentially on member states. In other words, national courts are also guardians of Community law, as the responsibility to review the administrative implementation of Community law rests with member states' judicial systems. Therefore, if a regulatory authority or an aggrieved party considers that a regulated entity has breached a law, it must first use national courts. If national courts are in doubt how to interpret Community law, they may, and sometimes must, refer the matter to the European Court of Justice for a so-called 'temporary ruling' (Art. 234). The ECJ then determines what the relevant Community law is. The national court must apply the law as interpreted by the ECJ without modifying or distorting it.

Supplementing the enforcement framework – the Lamfalussy Committee

The processes outlined above have been designed to ensure that Community law is effectively transposed and implemented in member states and that national courts do not interpret Community law differently. The Commission and the ECJ play key roles in upholding and interpreting Community law. While these processes look impressive on paper, there are a number of weak spots. First, often the Commission does not know that EU laws are being infringed. One reason is that private sector companies are hesitant to alert the Commission of such infringements, fearing that this may hamper their long-term relations with the infringing member states' authorities. Second, the processes are burdensome and timely, with infringement procedures and preliminary rulings taking several years from start to conclusion. These procedures are therefore not sufficiently efficient in deterring the undesired behaviour.

Lack of enforcement with respect to transposition has been identified as a particular problem in EU financial regulation. Accordingly, a committee was established under the chairmanship of Alexandre Lamfalussy to address the problem. The Lamfalussy Committee devoted extensive thought to the issue and a persistent theme in its recommendations is how to improve the incentives for proper implementation of EU law. First, the Lamfalussy procedure (see below) accords much more weight to peer pressure among member states. Since securities regulators will meet much more often in the Committee of European Security Regulators (CESR), the idea is that regulators not properly implementing law will have a much harder time justifying their dallying to their peers. More direct political pressure will then be exerted on infringing member states in the European Securities Committee and Council of Ministers. Moreover, the Lamfalussy procedure explicitly refers to the importance of Commission enforcement, and has designated it as 'level 4' in its four-level legislative process. Finally, an Inter-Institutional Monitoring Group was set up by the Lamfalussy Committee, which is charged with examining whether the recommendations of the Lamfalussy Committee are being properly enacted. Since the Lamfalussy Committee was limited to proposing reforms only within the provisions of the current treaty, however, these reforms do not address the problems associated with the processes outlined above.

Source: European Commission (2000).

A Large Role for the Member States

Under the single market approach, four elements affect the relationship between member states and the centre. First, the primary legal measure used has been a *directive* rather than a *regulation*. Both measures take precedence over member state laws, but while a regulation has direct effect, a directive offers member states the ability to choose the means by which they are to ensure meeting the ends set by the directive. Hence, a directive offers member states the ability to shape common laws to their circumstances as long as they fulfil the underlying aims.

Second, as a consequence of regulating by directives, member states are responsible for transposing EU law into national law, implementing these laws in a way that fulfils the aims set by the EU law and enforcing the law in such a way that the law has the same effect in all member states.

Third, as a result of its minimal characteristic, laws under the new approach grant member states the ability to set higher standards, provided that they do not discriminate, i.e. restrict access from entities in member states that are satisfied with implementing the minimum standard set by the directive.

Fourth, as long as EU law does not exist in a certain area and as long as member states respect the restrictions set by the Treaty in terms of non-discrimination, member states are free to add additional legislation.[14]

2.5 Single Market Financial Services Directives

As regards financial services, the White Paper contained a number of legal measures aimed at constructing an integrated European financial marketplace. Some of these deserve particular mention:[15]

- *Institutions.* The 2nd Banking Directive (1989), the Investment Services Directive (ISD, 1993) and the 3rd Life and Non-Life Insurance Directives (1992) provide financial institutions (banks, investment firms, regulated markets and insurance companies) the right to present their services across the EU with a single licence, after notifying their home authorities of their intentions.
- *Instruments.* A 1985 directive enables fund managers to provide certain investment funds – collective investment undertakings (UCITS) – across the EU. The 1989 Prospectus and Initial Public Offerings Directives provided some basic harmonisation of the information that firms are obliged to supply when offering securities to the public, hence allowing firms to raise capital EU-wide.
- *Solvency.* The 1989 Solvency Ratios Directive harmonises the capital standards for banks in the EU, implementing the Basel Accord. The 1993 Capital Adequacy

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[14] Accordingly, member states are for example free to regulate hedge funds, as long as this legislation takes into account existing legislation regarding e.g. capital standards, investor relations, disclosure requirements, etc.

[15] See Gros & Lannoo (2000) for further details.

Directive set minimum capital standards for banks' trading books and investment firms.

The importance of these directives is that they define the key ingredients (minimal harmonisation) that are required of institutions or instruments for mutual recognition to work. In the financial services sector, minimal harmonisation covers initial capital, solvency requirements, permissible activities, governance and supervisory requirements. These minimal standards do not prevent member states from setting higher standards for institutions or instruments within their jurisdiction, but this does not allow them to ban institutions and instruments from other member states from providing services within their territory, as long as they meet the EU standard. The directives thereby prescribe a specific procedure that needs to be followed for this 'single passport' system to work. When financial services are provided on a cross-border basis in the EU, the financial institution concerned is requested to inform its home country authorities of its intentions. The latter need to inform the host country authorities of the intentions of the institutions that fall under its supervision (the notification procedure). Host country authorities have time to respond and to raise objections, but free provision of services is, in principle, automatic when the procedure has been correctly followed. The notification procedure has nevertheless provoked extensive legal debates on the scope and length of the notification and the possibility for exemptions. In turn, this debate led the European Commission to publish an interpretative Communication in 1997 on the application of the notification procedure and the remaining host country powers in banking.[16]

3. Achieving a Truly Integrated Market for Financial Services

When the EU member states enacted the European Single Act in 1987, the goal was to create a single European market where goods, services, capital and labour could move freely. By and large, this was achieved in time to meet the 1992 deadline, and an EU regulatory framework for securities markets and financial services was in place. Nevertheless, this framework was not as developed in the different areas of financial services, and obstacles to the provision of cross-border financial services remained. This was particularly the case for securities markets, where the experience of the EU member states was limited.

3.1 Shortcomings of the Single Market Approach

The single market approach has succeeded in creating a single market for providers of banking, insurance and investment services throughout all the EU under a single licence. But not all areas are equally integrated. Sometimes the lack of integration is related to cultural or historical preferences, e.g. differences between the UK and Germany in the choice of the preferred channel of intermediation (market vs. bank finance). In addition, the market structure is not always optimal, e.g. in clearing and settlement, which increases the cost of cross-border trading. Legal traditions, moreover, differ between member states (e.g. in the approach to collateral and bankruptcy regimes)

[16] Commission Interpretative Communication on the Freedom to Provide Services and the Interest of the General Good in the Second Banking Directive, SEC(97) 1193 final, Brussels, 20.06.1997.

and member states sometimes restrict financial services actors, e.g. regarding the asset choice of pension funds, which also affects the integration of markets. Tax differences also play a major role in creating obstacles to integration.

But regulatory obstacles also explain the lack of integration. In certain areas, EU-level legislation is missing. In other areas, legislation may be in place, but it is vague and leaves too much discretion to the member states in implementation, or it has not been properly transposed or the Commission has been slow in enforcing it. And in other areas, legislation is on the other hand too detailed, and as financial markets constantly evolve, legislation therefore rapidly becomes outdated. In general, the EU's slow legislative procedure, where it normally takes three years for a legislative proposal to be adopted, is ill-suited to the fast-moving financial markets.

These problems have been particularly severe in securities markets. For a long time, insufficient regulatory harmonisation hampered the development of integrated European capital markets. It provided the opportunity for member states to indicate that one or another area was not harmonised at the EU level, and that it was therefore entitled to obstruct the free provision of services. Unlike the area of banking, the European Commission was rather lax in enforcing the harmonisation requirements and lacked experience in dealing with these matters.[17] This was a reflection of the fact that securities markets were until recently largely state-controlled in many member states, and that the emergence of a securities market worth this name was a recent phenomenon.

The launch of the euro in 1999 added a sense of urgency to the need to rectify this situation, as the full gains from a single currency would not materialise until a fully integrated financial market was achieved. The EU therefore took two initiatives, one aimed at updating the regulation in place, the other at reforming the regulatory processes and structures governing the enactment of financial regulation at the EU level.

3.2 Further Regulatory Harmonisation

Since 1998, the EU has pursued the objective of achieving a more integrated internal market for financial services by proposing further harmonisation of laws previously conferred to the realm of mutual recognition as well as updating financial regulation and hence eliminating any regulatory obstacles to full capital markets integration.

This renewed focus has been partly motivated by the expected economic benefits from further market integration, although it is still unclear why a political consensus was achieved to focus on financial services as an area in need of further regulatory harmonisation, and not on e.g. direct taxation, another major obstacle to an integrated market. A recent study contracted by the European Commission estimated that the dismantlement of all obstacles to a fully integrated European equity market would in the

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[17] The jury is still out whether substantial benefits were achieved as a result of the 1992 single market programme for the integration of securities markets. Some will refer to the intense competition among regulated EU securities markets, and the process of consolidation as a result of the Investment Services Directive (ISD). But others will refer to the many barriers to pan-European capital-raising exercises and the fragmentation of settlement systems, which increases costs for institutions and consumers.

long run raise the EU's real GDP level by 1.1% (€130 billion in 2002 prices).[18] While such measurements are politically popular, they are nevertheless fraught with methodological pitfalls. In addition, no attempt has been made to measure the extent to which the proposals put forward by the Commission effectively bring about an integrated financial market.

Composition of the Financial Services Action Plan (FSAP)

The EU's leaders, meeting in the Cardiff European Council in June 1998, asked the European Commission to develop a plan for correcting the regulatory problems mentioned above. The FSAP, adopted in May 1999, states that the EU's legislation has to be updated, widened and deepened, and the legislative process has to be speeded up. It proposes 42 legislative initiatives in four key areas:

1. *Wholesale finance.* The launch of the euro created far-reaching change in EU wholesale markets. 19 of the FSAP's proposals are concentrated in this area. The Commission has e.g. put forward a new proposal for the regulation of securities markets and broker/dealers (ISD II), a new market abuse and insider trading directive, an extended prospectus directive and a directive on regular and ad-hoc reporting requirements.
2. *Retail finance.* The Commission wants to create 'open and secure' retail markets. The FSAP contains 9 measures in the retail area. One of the objectives is to create clear and transparent information and to define redress procedures in order to ensure a high level of consumer protection while avoiding opening the door to protectionism. It wants to create laws that enable the development of new distribution channels such as distance selling, especially in e-commerce. Another initiative is to encourage the development of safe, effective and cheap payment systems for cross-border retail transfers.
3. *Supervision.* Financial supervision is currently in the hands of national authorities, supplemented by EU-led common interpretation of regulatory provisions and ad hoc supervisory cooperation. This might not be enough to ensure the stability and soundness of the EU's financial system, but there is no consensus on what additional measures would be required. As for securities, although the Commission does not rule out the creation of a European counterpart to the US Securities and Exchange Commission (SEC), it judges that such a move is premature. Instead the Commission is proposing a Securities Committee that would help the EU institutions to develop and implement regulation. The Commission also proposes the development of prudential rules regarding conglomerates, tougher laws on money laundering and more active information exchange with non-EU countries.
4. *Linked areas.* Legislation in other areas, not directly linked with financial markets, nevertheless leads to distortions and hampers the development of a single capital market. Taxes on savings income vary between member states, and so do corporate

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18 London Economics (2002, pp. v-vi). Apart from the London Economics study, the Commission has presented three other studies done by external researchers: CEPR (2002), CESF/University of Salerno (2001) and IVIE (2003).

taxes. Supplementary pensions are also unequally taxed. Differences in corporate governance rules, e.g. shareholders' rights, also differ between member states, which adds additional uncertainty to cross-border activity. The Commission has proposed to phase out harmful tax competition, to create a common approach to the taxation of savings income and has urged the member states to diminish the differences in corporate governance.

Current State of Progress

While initially slow, progress in adopting the measures has accelerated since 2002. At the time of writing, 36 of the FSAP measures were completed.

Table 1. Main pillars of the FSAP – Current state of play (January 2004)

Legislative measure	Status
Directives on UCITS I and II	Adopted, January 2001
Regulation on International Accounting Standards (IAS)	Adopted, July 2002
European Company Statute	Agreement, October 2001
Money Laundering Directive	Adopted, November 2001
Solvency Margin Requirements in Insurance Directive	Amended, March 2002
Distance Marketing Directive	Adopted, September 2002
Directive on the Supervision of Financial Conglomerates	Adopted, December 2002
Market Abuse Directive (MAD)	Adopted, January 2003
Directive on Occupational Pensions	Adopted, May 2003
Prospectus Directive	Adopted, July 2003
Takeover Bids Directive	Adopted, December 2003
Transparency Directive	Awaiting first reading
Investment Services Directive (ISD)	Awaiting second reading
Capital Adequacy Directive	Commission consultations

Source: European Commission (2003a) and news services.

By virtue of design, the FSAP with hindsight appears excessively back-loaded, with the most important and hence the most contentious proposals currently on the table. Of these, three deserve special mention:

- *Investment Services Directive.* In late 2002, the Commission completed two years of consultation by releasing its proposal for a revised ISD, a key directive under the FSAP covering the regulation of exchanges and brokers. Compared to the 1993 directive, the new proposal contains a much more ambitious investor protection regime, with e.g. the introduction of a best execution principle and enforced conduct of business rules applicable to regulated individuals and organisations. In addition, the directive introduces a transparency regime aimed at preventing a more competitive marketplace from fragmenting into disconnected liquidity pools. The latter have led to a polarisation of views concerning the appropriate level of transparency in the marketplace, with some observers (mainly regulated markets) claiming that a high level is necessary to avoid fragmentation while others (mainly investment firms) claim that too high levels of transparency stifles competition and hurts the provision of liquidity. The Economic and Monetary Committee of the European Parliament has so far been unable to reach agreement on compromise amendments, and as a result, the first reading has been delayed.

- *Takeover bids.* After nearly 20 years of effort, the EU still has no law governing takeover bids, ensuring equality of access for cross-border take-overs. Labelled a "vital part" of the FSAP by the Commission, an earlier draft directive suffered defeat in the European Parliament in 2001, with voting divided largely on national lines. After referring the drafting of a new regulatory strategy to a committee of high-level experts, the Commission put an amended proposal on the table in October 2002, which attempts to address some of the European Parliament's stated concerns (e.g. definition of equitable price, board neutrality and employee rights). However, discussions have been just as unproductive as last time around, with member states demanding the dismantlement of other countries' defences while protecting their own and the European Commission taking no coherent stance. Therefore, agreement still seems elusive, both in the Council and in the European Parliament.[19]
- *Capital adequacy.* For several years, the Basel Committee on Banking Supervision (BCBS) has been working on an updated version of the Basel Accord. The European Commission has vowed to implement the new accord once it has been improved, but a number of problems remain. First, the BCBS proposal has been significantly criticised, with the treatment of operational risk and the issue of pro-cyclicality being the subjects of particularly intense debate. Second, the United States recently signalled its intention to implement only part of the accord and only for some banks. Third, due to European legal requirements, the new accord will not only apply to internationally active banks, which is the case for other jurisdictions, but to all credit institutions. This may harm the competitiveness of these latter institutions. For all these reasons, the adoption of a new Capital Adequacy Directive (CAD) (scheduled for 2004) is likely to be contentious.

Therefore, while well on track, the FSAP still faces significant challenges and it remains uncertain whether the self-imposed January 2005 deadline will be met. For that to be the case, the three major initiatives discussed above have to be adopted before the end of the legislative mandate for the current European Parliament, which effectively means by April 2004.[20] If that deadline is not respected, legislative initiatives risk being delayed by the process of incorporating 10 new members into the EU institutions. Meeting that deadline is also challenged by the fact that the EU is currently equipping itself with new regulatory procedures in the field of financial services law. This is especially the case for the securities market legislation, which since February 2002 has consisted of a new four-level regulatory process, the so-called 'Lamfalussy process'.

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[19] For a comprehensive overview of the issues related to the takeover bids exercise, see McCahery et al. (2003).

[20] A conclusion stressed by the Inter-Institutional Monitoring Group (IIMG) in its May 2003 report.

3.3 Reviewing the Delegation of Regulatory and Supervisory Powers

As mentioned above, financial regulation follows the single market approach, i.e. minimum harmonisation of key rules, mutual recognition of remaining rules and home country control. The degree of minimum harmonisation, however, has been debated over the years. Another emerging debate concerns the appropriate location of regulatory and supervisory authorities, with calls for further centralisation at EU level. Although such centralisation remains strongly contested, the importance attached to implementing the FSAP in a timely manner has brought renewed attention to the importance of the structures governing the regulatory process.

The Lamfalussy Procedure

In July 2000, the French Presidency initiated the appointment of a Committee of Wise Men chaired by Alexandre Lamfalussy with the task of drafting proposals for improving the effectiveness of the EU's securities market regulatory process. In February 2001, the Wise Men proposed a new four-level legislative process, in which significant powers are delegated to implementing committees. The four levels are defined as follows:

1. *Broad framework principles for legislation* (so-called 'level 1' legislation) are agreed at the EU level. The Commission, after wide consultations, makes a legislative proposal to the Council and the Parliament using co-decision procedures.[21] In order to speed up the adoption, existing fast-track procedures are used if possible. In addition the preferred instrument should be regulations, i.e. a legislative act that is binding in its entirety and directly applicable in all member states, rather than directives, which can take up to 18 months for national authorities to implement.
2. *The detailed rules* (level 2 legislation) on how to implement the principles are developed at EU level via the use of so-called *comitology* procedures. Under this procedure, the Council delegates the power to execute EU legislation to the Commission. Representatives of the member states assist the Commission by participating in 'comitology' committees. The European Parliament has little direct influence at this level and acts more like an external supervisor.
3. Enhanced and strengthened *cooperation and networking between national regulators* ensures that implementation of Community law at member state level becomes more consistent (level 3).
4. More attention is devoted to the *enforcement* of Community law. This is essentially the task of the Commission, but member states and their regulators are expected to enhance their cooperation as well (level 4).

These proposals were endorsed by the heads of state and government at the Stockholm European Council in March 2001, following a commitment by the European Commission to "avoid going against the predominant views which might emerge within the Council". After a delay of almost one year, caused by the dissatisfaction of the European Parliament in its limited role, a "solemn declaration" was made by

[21] For a diagram of the co-decision procedure, see Annex 1.

Commission President Romano Prodi where the Commission pledged to "take the utmost account of the position of the European Parliament […] within the scope of the current institutional arrangements", and the European Parliament in February 2002 approved the new approach in exchange for a promise to review the situation in 2004.

Accordingly, framework principles are agreed under the normal legislative procedure, i.e. the Commission, after wide consultations, sends a legislative proposal to the EU Council and the EP acting under the co-decision procedure (double reading). The first measures using this approach have been agreed upon in the meantime, i.e. the Market Abuse and Prospectus Directives, although work on the implementing measures is still in progress.

Regarding level 2 implementing measures, the agreement led to the creation in June 2002 of two new implementing committees. First, the power to draft and approve implementing measures has been delegated to the European Securities Committee (ESC). The ESC acts as a regulatory committee chaired by the Commission and consists of high-level member state officials (in accordance with comitology procedures laid down in 1999/468/EC). Second, the Committee of European Securities Regulators (CESR) is an independent advisory group, advising the Commission in its drafting of implementing measures and acting as a point of consultation for market participants. CESR consists of senior representatives of national supervisory authorities, in some cases independent securities commissions and in others integrated financial services authorities.[22] It plays an instrumental role in supervisory cooperation, i.e. improving the common and uniform implementation of EU rules. CESR issues consultative papers for implementing measures for EU directives (for example, for the Market Abuse and Prospectus Directives) and standards on issues that are not (yet) formally harmonised at EU level, such as alternative trading systems or clearing and settlement systems.[23] See Figure 1 for a diagram of levels 1 and 2 under the Lamfalussy procedure.

In order to improve the enforcement of EU rules, the Council set up a monitoring group composed of EU Council, Commission and EP representatives. The group released its first report in May 2003.[24]

In sum, the changes to the regulatory structure following the Lamfalussy recommendations are largely aimed at improving the efficiency of the legislative process. To accomplish that aim, the changes primarily imply a far-reaching delegation of regulatory power away from member states and the European Parliament and in the direction of the European Commission, the institution that is in the driver's seat under the comitology procedure. The Commission drafts the primary legislation, participates in CESR work regarding level 3 measures and gives advice on level 2 measures, drafts level 2 measures and chairs the meetings of the ESC. Nevertheless, member state authorities have an important, if circumscribed role to play. They maintain control in CESR, putting forward advice by unanimity. Moreover, they retain their regulatory role by voting (by qualified majority) on the draft implementing measures being put forward

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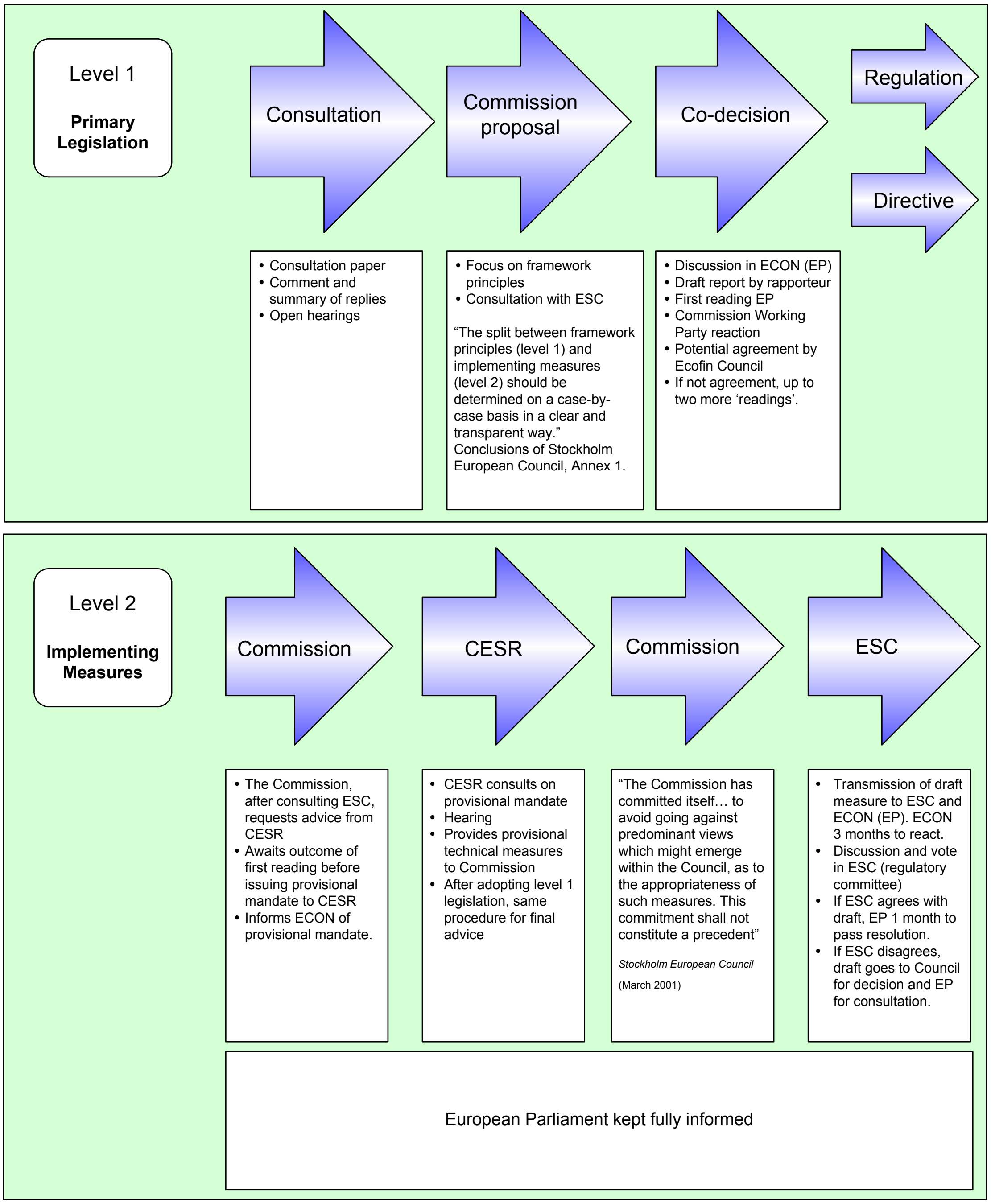
[22] See Annex 2 for an overview of the supervisory authorities in the member states.

[23] See www.europefesco.org for some examples.

[24] Inter-Institutional Monitoring Group (2003).

Figure 1. The Lamfalussy procedure – Levels 1 and 2



Abbreviations:

COM	European Commission
EP	European Parliament
ESC	European Securities Committee
CESR	Committee of European Securities Regulators
ECON	Economic and Monetary Committee of the EP

Sources: Committee of Wise Men (2001) and Inter-Institutional Monitoring Group (2003).

by the Commission. Therefore, the Lamfalussy procedure offers plenty of scope for member states to make an imprint on future legislation. Nevertheless, the Commission's role has been enforced and it now has the sole capacity to set the legislative agenda. The main loser appears to be the European Parliament, which so far has no role once a framework directive has been adopted by co-decision.

Extension of the Lamfalussy procedure

Since the inception of the Lamfalussy procedure for securities markets, there have been calls for applying the same format for all securities aspects (i.e. UCITS) as well as for the other parts of the EU's financial regulatory regime, i.e. banking and insurance.[25]

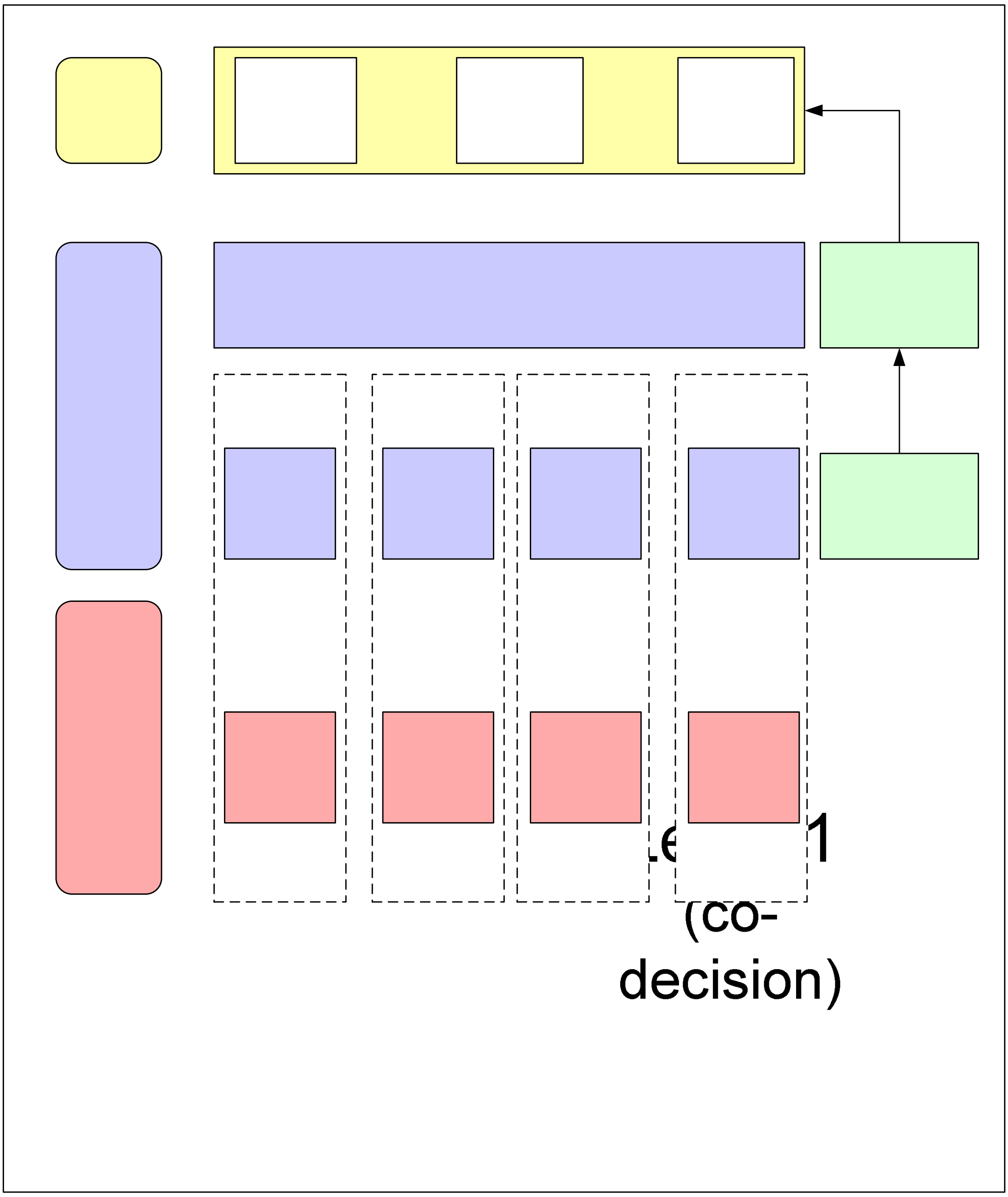
These calls were initially greeted with muted support from the European institutions, due to the very public disagreement over the adoption of the Lamfalussy procedure for securities markets. However, since a working agreement on how to apply the Lamfalussy procedure was reached between the Commission and the European Parliament in February 2002, the possibility of its extension to other areas has become more a question of timing. In the December 2002 meeting of EU economy and finance ministers Council, member states accepted the findings of the report by the Economic and Financial Committee (EFC), the main body charged with advising the Council, on financial regulation, supervision and stability.[26] In particular, the Council "reaffirmed its clear preference for implementing arrangements based upon the Lamfalussy framework to all financial sectors…". The Council also committed itself to work towards revising the rules that govern comitology in order to increase the role of the EP, i.e. revising Article 202 of the Treaty and the 1999 comitology decision. Pending agreement with the EP, the Council therefore endorsed the EFC's recommendations for a future regulatory structure (see Figure 2):

- *Securities (including UCITS)*. ESC regulatory committee and CESR advisory committee.
- *Banking.* Similar regulatory structure, i.e. a regulatory European Banking Committee (EBC) and an advisory Committee of European Banking Regulators (CEBR).
- *Insurance (including pensions)*. One regulatory committee, the European Insurance Committee (EIC) and one advisory committee, the Committee of European Insurance Regulators (CEIR).
- *Financial conglomerates.* In addition, the EFC recommends that particular attention be devoted to financial conglomerates and therefore proposes a similar comitology structure specifically devoted to those issues. It is less clear, however, on level 3 arrangements.

[25] See e.g. Lannoo & Levin (2003).

[26] Council of the European Union (2002).

Figure 2. The new regulatory structure



In addition, the EFC report proposed a new chain of command concerning policy advice to the Ecofin Council. The EFC will remain the primary source of advice on issues related to economic and financial affairs and financial stability issues to the Ecofin Council. It would be assisted by a new Financial Services Committee (FSC), which would replace the current Financial Services Policy Group (FSPG).

Once implemented, the EU will have taken yet another step towards a more centralised supervisory and regulatory structure. While there will be a plethora of committees in the short to medium term, the trends underlying this move to comitology are clear: a move towards granting the Commission a larger direct role in shaping detailed regulation at the expense of member state authorities, and an eventual unification of the fragmented committee landscape.

4. Issues Raised by Regulatory Reform and Market Integration

Thanks to the FSAP and the new regulatory structure, the EU is closer to its goal of achieving an internal market for financial services. However, the drafting, enactment and implementation of new laws and the new regulatory processes give rise to questions, some old and some new.

- Even though the EU has a new process in place, enacting legislation will remain difficult. The new structure will expose the lack of agreement on what kind of regulation the EU should be equipped with. For example, there is no agreement on the level of harmonisation required to achieve a truly integrated single market. Therefore, the EU should develop a European set of objectives and principles of good regulation.
- The *raison-d'être* for the Lamfalussy procedure was that it was regarded as a practical way of improving the EU's regulatory process within the confines of current treaty powers. The result, however, is a complex regulatory system. In addition, before expanding the Lamfalussy procedure – by making it the norm for the enactment of EU financial regulation – it is necessary to solve the constitutional issues raised in the 2001 debate between the European Parliament and the Commission and Council. This gives rise to the difficult questions about the appropriate degree of centralisation. Any consolidation of comitology requires treaty changes, notably regarding Art. 202. Therefore, the IGC is key in the consolidation of the Lamfalussy procedure. So far, it has failed to reach agreement on the proposals put forward by the European Convention.

Overall, firm political commitment is needed for a single securities market to materialise. By approving the Lamfalussy Committee's recommendations, the EU member states have shown some of this commitment. These points are elaborated upon below.

4.1 The Appropriate Degree of Harmonisation and Delegation

The new regulatory procedure for securities markets poses the difficult question concerning the appropriate balance between level 1 (framework rules) and level 2 legislation (implementing measures). That is, how much regulatory power should be delegated? Furthermore, by having a more flexible process at hand, the Commission may be tempted to press for further harmonisation of law, which puts the appropriate level of harmonisation on the agenda as well.

Harmonised Rules vs. Geographically-Based Rules

The idea behind the FSAP was not only to update financial legislation in place, but also to bring about more harmonisation in order to enable further market integration. On this issue, market practitioners often take an incoherent stance. At the outset there was broad support for the FSAP among practitioners. However, as it dawned upon them that more harmonised legislation brings not only the benefits of opening up foreign markets to them, but also the risks of upsetting traditional regulatory approaches, their support has become more qualified.

True, there is a genuine case for arguing that financial regulation in markets as diverse as the EU's financial markets cannot possibly be achieved with a 'one-size-fits-all' approach. Such differences may be structural. For example, the City's wholesale market functions differently from many other market centres, and legislation should accordingly try to accommodate the particular needs of this highly professional marketplace to the extent possible, but also those of other, less specialised markets. Such differences regularly give rise to arguments favouring less centralisation and granting more freedom to member states to set their own rules according to their circumstances and economic structures within their geographical boundaries.

This disparity is likely to persist, as it is a reflection of differences beyond the reach of current Community attention and powers (e.g. culture, taxation and overall legal approach). These persistent differences give rise to a difficult trade-off that Commission regulators have faced in the past and will increasingly face in the future: how to achieve further integration, which necessitates more harmonised regulation, while taking into account diversity and the needs this gives rise to.

By adopting the Lamfalussy Committee's proposals, member states and the Community institutions appear to have taken the decision that, by and large, the aim of achieving further integration takes precedence over adapting legislation to local needs:

- the new procedures are designed to make it easier to adopt harmonising framework laws (level 1);
- the new procedure also foresees more harmonisation of secondary legislation (level 2); and
- it is also likely to launch further convergence of rules via CESR's work on common standards and guidelines.

This decision should be read in the light of the single market experience outlined above. That approach relied upon minimal harmonisation, mutual recognition and home country control. However, outdated and ambiguous rules combined with too much discretion granted to member states in transposing the rules have contributed to a climate where policy-makers have given primary status to the overall aim of achieving a single market. Therefore, while there are genuine concerns with pursuing full harmonisation, in the light of the deficiencies of the single market approach, EU leaders are leaning in the direction of stressing the dangers of insufficient harmonisation: uneven implementation and enforcement giving rise to persistent obstacles to further market integration. Therefore, the Lamfalussy approach has been adopted, as it is supposed to make the adoption of Community law easier and to provide more pressure on member states to apply Community laws in a proper and common manner.

4.2 Widening the Scope of Centralisation

In order to solidify the gains made from the enactment of the Lamfalussy process for securities markets and to achieve its expansion to the other domains of financial regulation delineated above, agreement has to be reached with the European Parliament concerning its powers under comitology. Different points of view on the appropriate distribution of power between the Commission, the Council and the European Parliament held up the adoption of the Lamfalussy findings between 2001 and 2002. In short, the Parliament resents the limited influence it has under current rules regarding the delegation of power to implementing committees (it only has the right to be consulted). Instead, it has argued for the right to call back such draft implementing measures that it considers exceed the implementing powers granted to the committees in the framework law (level 1). Not surprisingly, the member states were reluctant to grant the Parliament such a right. It was not until all agreed to refer the matter to a forthcoming round of treaty revisions that a temporary agreement was reached in February 2002, hence permitting the adoption of the Lamfalussy procedure.

In light of the Convention's conclusions, it seems a foregone conclusion that the EP will receive its 'call-back' and that the comitology decision will be amended to reflect this new reality. If adopted by the IGC, this would be in line with the institutional wishes expressed during the adoption of the Lamfalussy procedure for securities market law in February 2002.

If so, it will be a moment of truth for the European Parliament. Long regarded as a political dwarf, the EP has since the beginning of the 1990s had conferred upon it the right to co-decide on an increasing number of dossiers. With a 'call-back', it would in practice retain considerable influence over technical financial regulation. To perform that role adequately requires the EP to possess significant competence and expertise, which it currently does not possess. Compared to other legislative assemblies, the EP remains short on competent policy staff supporting parliamentarians in their assessment of legislative proposals. Even though the Committee on Economic and Monetary Affairs has increased the number of its research staff members and has appointed a panel of independent financial services experts, the situation remains precarious. If it is not corrected and the EP as a result is not in a position to exercise its newfound powers with diligence, there is a risk that legislation will be held up.

4.3 Enhancing the Centre's Scrutiny of Member States

Among the outstanding problems with current EU law are uneven implementation and the lack of enforcement of implementation and interpretation of harmonised requirements. The Lamfalussy Committee highlighted this issue and granted CESR an important role in increasing the convergence of regulatory approaches to common problems. As delineated above, CESR can carry out that task indirectly by bringing regulators together in regular meetings drafting advice for implementing measures, or more directly by drafting guidelines or standards.

The role of CESR in this respect is hard to overestimate, as effective international cooperation often starts by bringing different regulators together on a more formal and regular basis. By bringing different regulators together, best practices are likely to disseminate faster. Therefore, it could trigger a process of convergence on the part of member states in their supervisory practices and finally also in regulatory structures. Currently, certain member states have a single supervisor (e.g. the UK), while others are divided according to the different financial services sectors (e.g. Spain). Fewer and more similar regulators would facilitate the task of European supervisory cooperation and CESR.[27]

In the longer run, it is likely that to make the convergence process more effective, CESR guidelines and standards will have to yield more legislative force than is currently the case. These are only recommendations, even though member regulators have pledged to implement them.

5. Conclusion

The EU's single market is based on the principles of mutual recognition, minimal harmonisation of rules and home country control. Over time, with the single market becoming more integrated, a process towards further harmonisation and centralisation has developed. This has led to calls for more control over EU decision-making, by both the member states and by the European Parliament.

In the area of securities markets, and financial markets in general, an additional problem has come into play, i.e. developing a system by which legislation can be adapted rapidly to market developments, while respecting the fundamental principles of democratic institutions and the EU. This was solved in the approach proposed by the Lamfalussy Committee, in which the EU would enact laws reflecting general principles of regulation, with details being left to implementing committees.

It is too early to verify whether this approach has worked, but it has received political acceptance and is spreading to other areas of market regulation. Some problems can be noted, however, that are likely to remain on the agenda for some time:

- deciding what is principle and what is detail in regulation,
- the tendency towards further centralisation of regulation and supervision and
- the interaction between democratic accountability and decision-making efficiency.

For the EU's financial markets to continue to successfully develop, a balance will need to be struck between the strength of the centre and the dynamism of its member states. So far, there has been a consensus allowing further strengthening of the centre, although the EU institutions need to check continuously whether the processes are developing in line with the market's needs. Too high a degree of centralisation may undermine the strength of the EU's diversity and place the EU at odds with the member states, thereby undermining the very reason of its existence in the long run. Too much decentralisation will weaken the internal market, reduce the consensus behind the objectives and relegate the EU to a simple free trade area.

[27] This point was made by Sir Howard Davies, outgoing chairman of the UK Financial Services Authority (FSA), in a speech at the 2003 Belgian Financial Forum. An overview of the structure of the national financial supervisory authorities is given in Annex 2.

References

Borchardt, Klaus-Dieter (2000), *The ABC of Community Law*, Burkhardt: Brussels.

CEPR (Centre for Economic Policy Research) (2002), “Financial Market Integration, Corporate Financing and Economic Growth”,

CSEF (Centre for Studies in Economics and Finance) (2001), “Analyse, Compare and Apply Alternative Indicators and Monitoring Methodologies to Measure the Evolution of Capital Market Integration in the European Union”,

Committee of Wise Men (2001), *Final Report of the Committee of Wise Men on the Regulation of European Securities Markets*,

Council of the European Union (2002), “Ecofin Council Minutes 3 December 2002”, Ecofin Council, 3 December, 14368/02 (Presse 361).

Economic and Financial Committee (2002), *EFC report on financial regulation, supervision and stability, revised to reflect the discussion at the 8 October meeting of the Ecofin Council*.

European Commission (1985), “Completing the Internal Market”, White Paper from the Commission to the European Council, COM (1985) 310 final.

———— (1997), *Commission Interpretative Communication on the Freedom to Provide Services and the Interest of The General Good in the Second Banking Directive*, SEC (97) 1193 final, 20 June.

———— (1998), “Financial Services: Building a Framework for Action”, Communication of the Commission.

———— (2003a), *Progress on the Action Plan for Financial Services – Annex*.

———— (2003b), *How the European Union Works*.

Gros, Daniel and Karel Lannoo (2000), *The Euro Capital Market,* Chichester: John Wiley and Company.

Harris, A. Douglas (2002), “A Symposium on Canadian Securities Regulation: Harmonization or Nationalization?”,

Inter-Institutional Monitoring Group *(The Lamfalussy Process)* (2003), *First Interim Report Monitoring the New Process for Regulating Securities Markets in Europe)*.

IVIE (Instituto Valenciano de Investigaciones Económicas) (2003), “The Monitoring of Structural Changes and Trends in the Internal Market for Financial Services”,

Lannoo, Karel (2003), “The New ISD: A symptom of excessive harmonisation in the implementation of the Lamfalussy approach?”, CEPS Commentary, (www.ceps.be).

———— (2002), *Supervising the European Financial System*, CEPS Policy Brief No. 23, Centre for European Policy Studies, Brussels.

Lannoo, Karel and Mattias Levin (2003), *Obstacles to Pan-European Asset Management: Achievements and Regulatory Impediments*, CEPS Task Force Report, No. 44, Centre for European Policy Studies, Brussels.

Levin, Mattias (2003), *Competition, Fragmentation and Transparency: Providing a Regulatory Framework for Fair, Efficient and Dynamic European Securities Markets*, CEPS Task Force Report, No. 46, Centre for European Policy Studies, Brussels.

London Economics (2002), "Quantification of the Macro-Economic Impact of Integration of EU Financial Markets",

McCahery, Joseph A. et al. (2003), *The Economics of the Proposed European Takeover Directive*, CEPS Research Report, No. 32, Centre for European Policy Studies, Brussels.

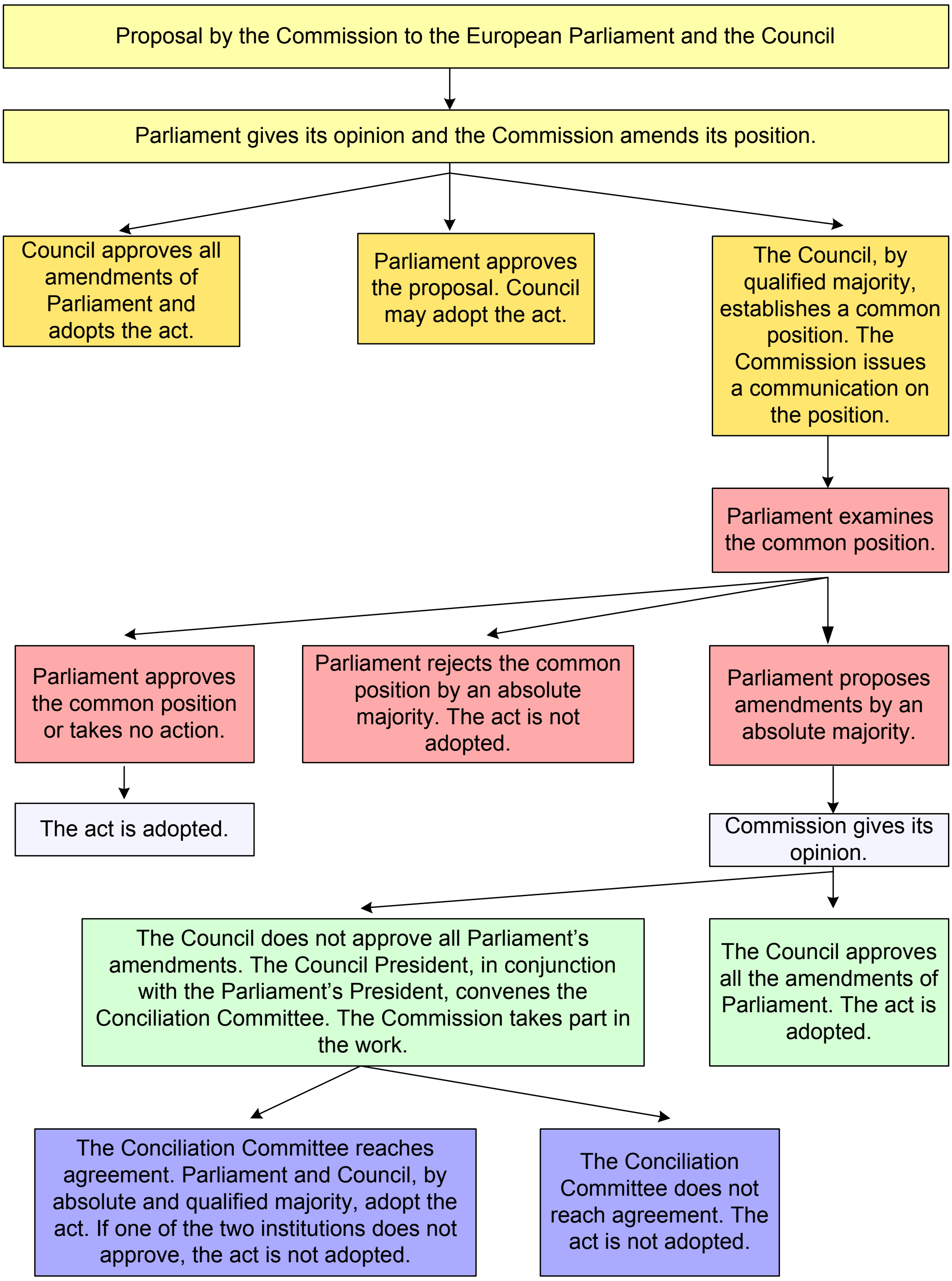
Pelkmans, Jacques (1987), "The New Approach to Technical Harmonization and Standardization", *Journal of Common Market Studies*, 25, 249.

Sun, Jeanne-Mey and Jacques Pelkmans (1995), "Regulatory Competition in the Single Market", *Journal of Common Market Studies*, 33, 67.

Tallberg, Jonas (2002), "Delegation to Supranational Institutions: Why, How, and with What Consequences?", *West European Politics*, 25, 23.

Woolcock, Stephen (2001), "Competition among rules in the single European market", in Anthony I. Ogus (ed.), *Regulation, Economics and the Law,* Cheltenham: Edward Elgar.

Annex 1
The EU's Co-decision Procedure



Source: European Commission (2003).

Annex 2
Structure of the Financial Supervisory Authorities in the EU, some Accession Countries, Japan and the US

	Banking	Securities	Insurance
B	CB	CB	I
DK	FSA	FSA	FSA
DE	FSA	FSA	FSA
EL	CB	S	I
E	CB	S	I
F	B/CB	S	I
I	CB	S	I
IRL	CB	CB	G
L	BS	BS	I
NL	CB	S	I
AU	FSA	FSA	FSA
P	CB	S	I
SF	BS	BS	I
SW	FSA	FSA	FSA
UK	FSA	FSA	FSA
CH	BS	BS	I
CZ	CB	SI	SI
H	FSA	FSA	FSA
N	FSA	FSA	FSA
PL	CB	S	I
SLOE	CB	S	G
US	B/CB	S	I
J	FSA	FSA	FSA

Notes: CB = central bank, BS = banking and securities supervisor, FSA = single financial supervisory authority, B = specialised banking supervisor, S = specialised securities supervisor, I = specialised insurance supervisor, SI = specialised securities and insurance supervisor and G= government department. The supervision of securities markets is a generalisation of the most prevalent model in a certain state; it does not take the spread of the elements of supervision over different authorities into account.

Source: Lannoo (2002).