

ACHIEVEMENTS OF THIS PARLIAMENT IN FINANCIAL SERVICES

Summary: The current legislature that is coming to its end in a few months, appears today to have been one of the most intense and productive periods for the financial services sector in Europe. The entry into force of the Amsterdam Treaty that reformed the co-decision procedure, together with the launch of the Financial Services Action Plan (FSAP) by the Commission, in May 1999, provided the newly elected European Parliament with a new role to play and a heavy workload to deal with, in order to establish a Single Market for financial services.

The European Parliament has also been a major actor within the new framework proposed by the Committee of Wise Men chaired by Baron Lamfalussy to reform the law-making and implementation process for financial services. As the main guarantor of democratic control among the EU institutions, it has been seeking to ensure that the transition to a more efficient rule-making process for EU financial markets does not affect the institutional balance of the Union, nor does it prevent the European Parliament bringing the voice of European citizens into the law.

On the eve of the transition to an enlarged Union and a 732-member Parliament, it is encouraging to note that remarkable results have been achieved, although the actual implementation of a Single Market for financial services will still require the European Parliament's commitment in the future.

I. The Financial Services Action Plan

The 1999-2004 legislature has been a crucial phase for the integration of European financial markets and for the performance of the European Parliament (EP)'s role. Since the very start of its mandate, the current EP has accepted the challenge issued by the agenda set up within the FSAP. Under Article 251 of the EC Treaty, the two co-legislators – the Parliament and the Council - share the responsibility for most of the measures foreseen in the FSAP to be adopted in a timely and efficient manner. As recalled within the Ninth Progress Report, 36 (up today, 39) out of 42 measures have been already issued by the competent institutions, the EP having been directly responsible for, or contributed to most of them.

The Action Plan's target of eliminating barriers to integration in both wholesale and retail markets has demanded a very flexible approach from the Parliament, which has had to take into account the activity and interests of a range of players: issuers and service providers, investors and consumers, regulators and supervisors. In this respect, the Parliament has benefited from the practice of public consultations undertaken by the Commission and also from the advice it has sought directly from market participants' and national authorities' experts.

FSAP Strategic Objective 1 - A Single EU Wholesale market

In order to achieve the completion of a single EU wholesale market the EP was called upon to contribute to the adoption and implementation of measures intended by the FSAP to:

- *enable corporate issuers to raise finance on competitive terms on an EU-wide basis;*
- *provide investors and intermediaries with access to all markets from single point-of-entry;*
- *allow investment service providers to offer their services on a cross-border basis without encountering unnecessary hindrances or administrative or legal barriers;*
- *establish a sound and well integrated prudential framework within which asset managers can put funds at their disposal to their most productive use;*
- *create a climate of legal certainty so that securities trades and settlement are safe from unnecessary counter-party risk.*

The European Parliament expedited its work and the following acts could be adopted:

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
Directive 2003/6/EC	on insider dealing and market manipulation (market abuse)
Regulation (EC) 1606/2002	on the application of international accounting standards (IAS)
Directive 2003/51/EC	amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings
Directive 2002/47/EC	on financial collateral arrangements
Directive 2004/xx¹/EC	on take over bids
Regulation (EC) 2157/2001	on the Statute for a European company (SE)
Directive 2001/86/EC	supplementing the Statute for a European company with regard to the involvement of employees
Directive 2001/107/EC	amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) with a view to regulating management companies and simplified prospectuses
Directive 2001/108/EC	amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), with regard to investments of UCITS
Directive 2003/41/EC	on the activities and supervision of institutions for occupational retirement provision
EP Resolution - 15/01/2003	on the communication from the Commission " Clearing and settlement in the European Union - Main policy issues and future challenges"
Directive 2004/xx²/EC	on the harmonisation 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
Directive 2004/xx³/EC	on investment services and regulated markets, and amending Council Directives 85/611/EEC, Council Directive 93/6/EEC and European Parliament and Council Directive 2000/12/EC

The Commission Proposal for a Directive on **cross border mergers of companies** with share capital has been submitted to the EP, which started the 1st reading, although its final adoption is now foreseen only under the next legislature.

FSAP Strategic Objective 2: Open and Secure Retail markets

For completing the integration of retail financial markets, the EP has acted in order to comply with the target of the FSAP, namely to:

¹ Awaiting publication on the OJ.

² Parliament endorsed in 1st reading the Compromise text between the Council and the Parliament on 30 March 2004. The formal adoption by the Council is expected in May 2004.

³ Parliament adopted in 2nd reading the Compromise text on 30 March 2004. The formal adoption by the Council is expected in May 2004.

- equip consumers with the necessary instruments (information) and safeguards (clear rights and effective dispute settlement) to permit their full and active participation in the single financial market;
- identify and roll back unjustified insistence on non-harmonised consumer-business rules as an obstacle to cross-border provision of services;
- promote the emergence of effective mechanisms for overcoming fault in the single retail financial market which have their origin in differences in private law;
- create legal conditions in which new distribution channels and distance technologies can be put to work on a pan-European scale;
- encourage the emergence of cost-effective and secure payment systems which enable citizens to effect small value cross-border payments without incurring exorbitant charges.

The EP has accordingly adopted, together with the Council, or has given his opinion on the following acts:

Directive 2002/65/EC	concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC
Directive 2002/92/EC	on insurance mediation
Recommendation (2001) 447	on pre-contractual information to be given to consumers by lenders offering home loans
Regulation (EC) 2560/2001	on cross-border payments in euro

The EP has already started the analysis of the Commission's communication issued last December presenting the **New Legal Framework for Payments** in the internal market, which is due to adapt legislation to the objective mentioned above as regards payment systems in the EU. Similarly, the EP has started the 1st reading of the proposal of a directive concerning **unfair business-to-consumer commercial practices**.

FSAP Strategic objective 3: State-of-the-art prudential rules and supervision

The FSAP's objective of strengthening prudential rules and guaranteeing effective supervision of European financial markets has proved to be of major importance, also as a consequence of events on the international scene that emphasized the vulnerability of the existent framework. The EP has been particularly conscious of the great impact over market operators, investors and consumers of such events and reacted vigorously in order to comply with the FSAP's objective:

- to eliminate any lacunae in EU prudential framework, arising from new forms of financial business or globalisation, as a matter of utmost urgency;
- to set rigorous and appropriate standards so that the EU banking sector can successfully manage intensification of competitive pressures;
- to contribute to the developing of EU supervisory structures which can sustain stability and confidence in an era of changing market structures and globalisation;
- to develop a regulatory and supervisory approach which will serve as the basis for successful enlargement;
- to enable the EU to assume a key role in setting high global standards for regulation and supervision, including financial conglomerates.

The following acts were consequently adopted:

Directive 2001/17/EC	on the reorganisation and winding-up of insurance undertakings
Directive 2001/24/EC	on the reorganisation and winding up of credit institutions

Directive 2000/46/EC	on the taking up, pursuit of and prudential supervision of the business of electronic money institutions
Directive 2002/12/EC	amending Council Directive 79/267/EEC as regards the solvency margin requirements for life assurance undertakings
Directive 2002/87/EC	on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate
EP Resolution – 02/09/2003	on the adequacy of banks' own funds (Basel II)

General Objective: Wider conditions for an optimal single financial market

Under the FSAP's general objective of *tackling fiscal disparities* among Member States, the EP has given an important contribution - within the framework of Article 94 of the EC Treaty that limits its intervention to an opinion upon harmonization of tax regimes, Member States being first competent and bound by unanimity rule. The EP has been involved in the debate over several measures aiming at addressing disparities in tax treatment. The following act has been adopted:

Directive 2003/48/EC	on taxation of savings income in the form of interest payments
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Entry into force of the above measure is subject to the conclusion of agreements with third countries. The EP has been following with great attention and supporting the negotiation process undertaken by the Commission, particularly with Switzerland and the United States. An opinion has been adopted in the March plenary concerning the negotiations with the Swiss Confederation.

In the life of this legislature, it has become increasingly apparent that putting in place an *efficient and transparent legal system for corporate governance* is a pre-condition for efficient and fair financial markets. That was translated in a further, autonomous **Action Plan to modernise company law and enhance corporate governance within the European Union**, following the conclusions of the Committee of Experts chaired by Jaap Winter. The EP has been preparing its opinion on the overall initiative, but has already invited the Commission to take some steps in order to address deficiencies shown up by corporate scandals in Europe and the US. Most recently, the EP adopted the following provision:

EP Resolution – 12/02/2004	on corporate governance and supervision of financial services, the Parmalat case
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Further to the aforementioned Directive on take-over bids, the following acts were adopted:

Directive 2003/58/EC	amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies
Regulation (EC) 1435/2003	on the Statute for a European Cooperative Society (SCE)
Directive 2003/72/EC	supplementing the Statute for a European Cooperative Society (SCE) with regard to the involvement of employees

II. Besides the FSAP

In addition to the mentioned acts foreseen by the FSAP and the Action Plan on Company Law and Corporate Governance, the following text was adopted subject to the consultation of the EP:

Directive 2003/123/EC	amending Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States
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On the following subjects the EP has acted on its own initiative and issued reports that require a consistent and prompt reaction from the Commission:

EP Resolution - 12/02/2004	on role and methods of rating agencies
EP Resolution - 15/01/2004	on the future of hedge funds and derivatives

Another important piece of legislation that was not included in the FSAP but will surely have a strong impact over retail customers, is the Proposal for a Directive on the harmonisation of the laws, regulations and administrative provisions of the Member States concerning **credit for consumers**. The EP had a vigorous debate on this controversial proposal during its 1st reading that is coming now to an end. It has contributed to underlining the gaps within the Commission's text and has tabled amendments in order to close them.

II. The EP as watchdog of the Lamfalussy procedure's democratic balance

One of the major achievements of the current EP's activity is undoubtedly its ability to manage the transition towards a new procedural framework for the legislation in financial services, adopted upon the advice of the Lamfalussy Committee.

Without ever losing a pragmatic approach to the need for better quality, coherent and up-to-date rules for the sector, the EP has been seeking to ensure that the 4 level-structure for regulating financial services would not impair the legislator's responsibility for setting out principles and fundamental definitions. The inter-institutional agreement reached in 2002 among the EP, the Commission and the Council guarantees that the new regulatory structure will be applied while respecting transparency duties vis-à-vis the EP and market participants. Most importantly, the EP claimed a right of supervision over implementing powers delegated to the Commission, to be exercised by reviewing level-2 rules after a 4-year period from their entry into force and through a 'call-back' mechanism. The EP expects also a consistent amendment of Article 202 of the EC Treaty (Article I-35 of the Draft Constitution) that would allow the EP to revoke the Commission's right to adopt delegated implementing measures.

The ongoing debate over the extension of the Lamfalussy process to banking and insurance services legislation will be concluded only in the next legislature, but the critical aspects of its functioning have already been underlined by the ECON Committee Report of 16 March. The conditions under which the current EP would accept such a major reform aim to safeguard its role of guarantor of the democratic balance, also for the benefit of the forthcoming Parliament.

Conclusion

The numerous measures that the EP has contributed to adopt during the last five years provide today the financial markets' players with more legal instruments. However, as most of the FSAP's measures still need to be implemented by Member States, it is as yet premature to assess how successful it will be in meeting its desired aim of creating a single market in financial services. Similarly, while effort has been concentrated on how to create effective legislation quickly, it is also necessary to have a speedy process for changing legislation that is poorly targeted, inappropriate, outdated or ineffective.

While remaining cautious in extending the Lamfalussy process' scope, the – forthcoming - EP should be vigilant on the main issue of correct implementation and enforcement of all these measures, not only aiming to harmonise EU rules and requirements, but also to ensure that the European Union is the competitive market of choice in a global environment.

Briefing notes are prepared by the Financial Industry Committee to the European Parliamentary Financial Services Forum. For further information on the subjects raised in the briefs please contact the Chairman, Members or Secretariat of the Financial Industry Committee.

Steering Committee

Pervenche Beres, MEP
Robert Goebbels, MEP
Chris Huhne, MEP
Giorgos Katiforis, MEP
Piia-Noora Kauppi, MEP
Olle Schmidt, MEP
Alexander Radwan, MEP
Peter Skinner, MEP
Theresa Villiers, MEP

Chairman Financial Industry Committee

Dr. Rainer W. Boden
Deutsche Bank, EU-Representation
17, Avenue Marnix
B – 1000 Brussels
Tel: 0032 2 551 60 06
Fax: 0032 2 551 61 08
E-mail: rainer-w.boden@db.com

Secretary

John Houston
Houston Consulting Europe
Av. de la Joyeuse Entrée, 1-5
B – 1040 Brussels
Tel: 0032 2 504 80 40
Fax: 0032 2 504 80 50
E-mail: secretariat@epfsf.org

Founding Members

Richard Balfe MEP
C.A. Gasoliba I Bohm MEP
Robert Goebbels MEP
Chris Huhne MEP
Othmar Karas MEP
Giorgos Katiforis MEP
Piia-Noora Kauppi MEP
Astrid Lulling MEP
Ria Oomen-Ruitjen MEP
John Purvis MEP
Alexander Radwan MEP
Karin Riis-Jorgensen MEP
Olle Schmidt MEP
Peter Skinner MEP
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