

# On European Financial Regulation

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# My points

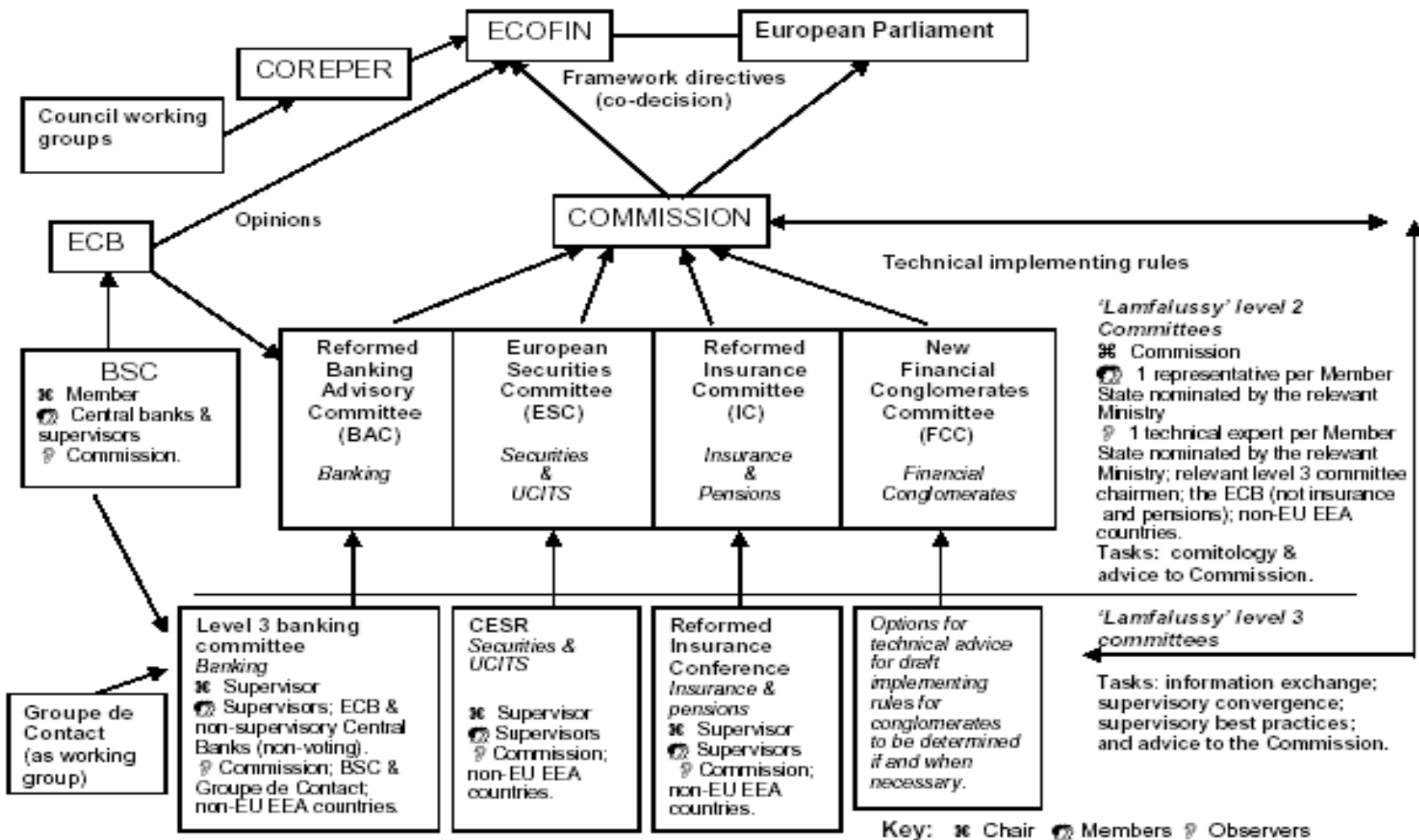
- FSAP, Lamfalussy and the Green Paper: situation and prospects
- The vanishing boundaries between banking, securities markets and insurance: costs and benefits
- Beyond Lamfalussy: managing the vanishing boundaries
- Separate “production” from “distribution” of financial services
- Asset management and banking: Chinese walls are insufficient?
- Open platforms
- Euro-regulated euro-wide asset managers together with (euro-regulated securities markets and) euro-regulated large internationally active banks
- Stability and Transparency : a future single European regulator?

# FSAP, Lamfalussy and the Green paper (2005-2010)

- **FSAP**: a decent **success** but with some **leftovers** (eg: vertical integration vs horizontal competition in trading and post-trading), some serious **weaknesses** (eg: takeover bids...) and **transposition** slow on average; weaknesses appeared in **implementation**
- **Lamfalussy**: directives still too **detailed**; problems with Parliament and **sunset clauses**; still based on regulation **by sector** (even if with partially successful efforts of coordination); **too complicated?**
- **Green paper**: a realistic emphasis on **implementation**, some important points (removing obstacles on **cross border M&As**), but insufficient ambitions and **no “new vision”**; one can feel the weak moment of European “political” integration

# Baroqueness ?

CHART A Possible New Committee Architecture for Financial Sector Rule-Making



## Transposition of FSAP Directives - State of play as at 12/09/2005

CP = partially notified to the Commission

NC = no notification received by the Commission

EX = notification received and under examination by the Commission

OK = notification received and checked by the Commission or no notification required = ok

NA = not applicable = ok

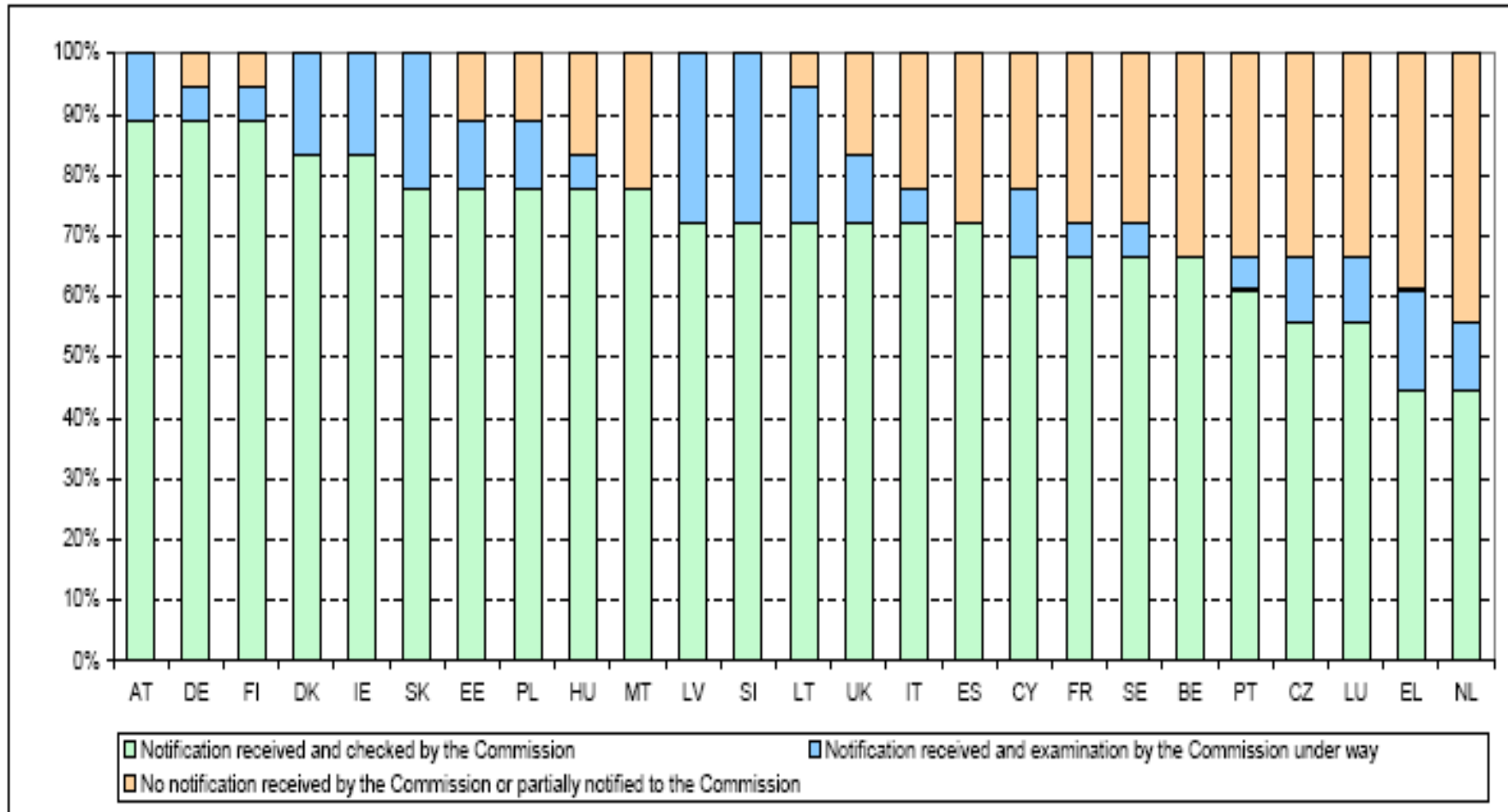
D = derogation = ok

Action	Measure taken	Transposition deadline	Member States																										
			Austria	Belgium	Cyprus	Czech Republic	Germany	Denmark	Estonia	Greece	Spain	Finland	France	Hungary	Ireland	Italy	Lithuania	Luxembourg	Latvia	Malta	Netherlands	Poland	Portugal	Sweden	Slovenia	Slovakia	United Kingdom		
			AT	BE	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	SE	SI	SK	UK		
Directive on the taking up, pursuit and prudential supervision of the businesses of electronic money institutions.	Directive 2000/46/EC	27/04/2002	OK	OK	OK	OK	OK	OK	NC	OK	OK	OK	OK	OK	OK	OK	OK	OK	EX	OK	OK	OK	OK	OK	OK	OK	OK	OK	
Directive amending the insurance directives and the ISD to permit information exchange with third countries	Directive 2000/64/EC	17/11/02	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	
Directive on the reorganisation and winding-up of insurance undertakings	Directive 2001/17/EC	20/04/03	OK	OK	OK	CP	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	NC	OK	OK	OK	OK	
Directive amending the money laundering directive	Directive 2001/97/EC	15/06/03	OK	OK	OK	OK	OK	OK	OK	NC	OK	OK	CP	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	
Two directives on UCITS	Directive 2001/107/EC	13/08/03	OK	OK	OK	OK	OK	OK	OK	EX	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	NC	OK	OK	OK	OK	OK	OK	OK	
	Directive 2001/108/EC	13/08/03	OK	OK	OK	OK	OK	OK	OK	EX	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	NC	OK	OK	OK	OK	OK	OK	OK	
Directives amending the solvency margin requirements in the insurance directives	Directives 2002/12/EC repealed by 2002/83/EC	20/09/03	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	CP	
	Directive 2002/13/EC	20/09/03	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	
Directive on financial collateral arrangements	Directive 2002/47/EC	17/12/03	OK	OK	OK	EX	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	EX	OK	OK	NC	OK	OK	OK	OK	EX	OK	OK	
Directive amending the 4th and 7th Company Law Directives to allow fair value accounting	Directive 2001/65/EC	1/01/04	OK	OK	CP	OK	OK	OK	EX	NC	OK	OK	OK	OK	OK	OK	EX	NC	OK	CP	EX	OK	OK	OK	EX	EX	OK		

Directive on the taxation of savings income in the form of interest payments	Directive 2003/48/EC	1/01/04	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK			
Directive on the reorganisation and winding-up of banks	Directive 2001/24/EC	5/05/04	OK	OK	EX	NC	OK	OK	OK	NC	OK	OK	OK	OK	OK	OK	CP	OK	EX	OK	OK	OK	NC	NC	EX	OK	OK	
Directive on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate.	Directive 2002/87/EC	11/06/04	OK	CP	EX	NC	OK	EX	OK	NC	CP	OK	CP	EX	OK	OK	EX	NC	EX	OK	NC	CP	NC	NC	EX	OK	EX	
Directive on the Distance marketing of Financial Services	Directive 2002/65/EC	9/10/04	OK	NC	OK	CP	OK	OK	OK	OK	NC	OK	NC	CP	OK	NC	OK	OK	OK	NC	OK	NC	OK	OK	OK	OK	OK	
Directive on insider dealing and market manipulation	Directive 2003/6/EC	12/10/04	EX	CP	NC	EX	OK	EX	OK	OK	EX	OK	CP	EX	NC	EX	EX	OK	NC	OK	OK	NC	EX	NC	EX	OK	OK	EX
Directive modernising the accounting provisions of the 4th and 7th Company Law Directives	Directive 2003/51/EC	1/01/05	OK	NC	CP	CP	OK	OK	EX	NC	CP	OK	OK	OK	EX	NC	EX	NC	EX	CP	EX	EX	EX	OK	EX	EX	CP	



**Rate of transposition of FSAP Directives - view per Member State - State of play as at 12/09/2005**  
**Transposition deadline already passed**



# **Obstacles to cross border M&A**

(in part applicable also to security houses and stock exchanges)

## Summary

	I. <u>Legal Barriers</u>	II. <u>Tax barriers</u>	III. <u>Implications of supervisory rules and requirements</u>	IV. <u>Economic barriers</u>	V. <u>Attitudinal barriers</u>
a) <i>Execution risks</i>	1. Legal uncertainty 2. Opaque decision making processes 3. Legal structures 4. Limits or controls on foreign participations 5. Defence mechanisms 6. Impediments to effective control 7. Difficulties to assess the financial situation	14. Uncertainty on tax arrangements 15. Uncertainty on VAT regime	23. Concerns regarding financial stability 24. Misuse of supervisory powers 25. Supervisory approval processes		35. Political interference 36. Employees' reluctance 37. Shareholders' acceptance of quotation changes 38. Shareholders' and analysts' apprehension of failure risk
b) <i>One-off costs</i>	8. Restriction on offers	16. Exit tax on capital gains		28. Fragmentation of the European capital markets	
c) <i>Ongoing costs</i>	9. Employment legislation 10. Accounting systems 11. Divergent consumer protection rules 12. Data protection 13. Differences in private law	17. Transfer pricing 18. Inter-group VAT 19. No homogeneous loss compensation 20. Specific domestic tax breaks 21. Discriminatory tax treatments 22. Taxation on dividends	26. Divergences in supervisory practices 27. Multiple reporting requirements	29. Different product mixes 30. Non-overlapping fixed costs 31. Lack of middle-size institutions 32. Absence of critical size 33. Market power 34. Differences in economic cycles	39. Political concessions 40. Consumer mistrust in foreign entities

# The vanishing of the boundaries between banking, securities markets and insurance: costs and benefits

- **Benefits:** economies of **scale** and **scope**...
- **Costs:** **conflicts of interest** (semi-opaque dominance of banks) mixed with **monopolistic issues**, including vertical integration of banks/exchanges/trading/post-trading; different attitudes and opportunities on the **distribution channels** front (eg: retail selling of insurance and securities vs traditional banking products); vanishing emphasis on specific **information and transparency** requirements;...

# Beyond Lamfalussy: managing the vanishing boundaries

- The vanishing should be taken care actively, with a “*vision*”
- Managing the separation (with a mix of regulations and incentives) of “*production*” of financial services from their “*distribution*”? (could this also help to overcome the issue of “**nationalism**” in forming the single market?)
- In particular: more than “Chinese walls” in **Asset Management** (the most typical example of a “producer”): consequences on supervision, transparency, stability (for competition: see over)

# From open platforms to single rules

- Strict enforcing of new **open platforms rules for selling asset management** products like mutual funds?
- This would favour competition with **quality and price improvements** (both in producing and in distributing AM services!), economies of scale, the formation of a **single market**
- Euro-wide asset managers: compulsory adoption of a “European corporation” status with a **set of European rules** and a **central (light) European supervisor of national supervisors**
- An **option to adopt Euro rules and supervision** for smaller-scale national asset managers
- This would help to move towards a single set of rules and a single supervisor for European **financial exchanges** (M&As insufficient with different rules in different countries: the Paris-BruX-Amsterd... example)
- This would also go well together with a **parallel development in Euro-wide internationally active banks** (common status, same set of regulations, opting-in option for smaller banks, a light central supervisor of national supervisors)
- These developments might be feasible (perhaps only in a weaker form) **without changing the Treaty**, i.e without emphasized delegation of powers to European regulators/supervisors

# European supervisor(s)?

*an issue for the far future*

- From a common set of rules and light central supervisors of national supervisors towards **single regulators-supervisors** ?
- Separate central **supervisors by sector would be very inefficient**
- **Transparency/correctness/conduct-of business vs stability** : a **single supervisor?**
- And what about **anti-fraud** supervision, the police and the magistrates?
- Both US and Italy's recent cases, for example, suggest to think seriously that **securities/transparency issues are deeply and increasingly interlinked with both banking/stability and anti-fraud** problems (eg: banks' financing of security purchases by their clients or shareholders (!) to take over corporations and banks in non-transparent and/or illegal manners; illegal practices in selling mutual or hedge funds via banks...)
- Separate, competing, non-coordinated, overlapping supervision and enforcement of rules and laws can create confusion, uncertainty, inefficiency, increases the costs of regulation and of **compliance (!!!)** and often leads to put the substantial powers in the peculiar hands of the **magistrates and of the police**
- Let (at least at the European level) the supervisors be **efficient** (within a single authority?) **and coordinate ex-ante with the judiciary...**

**Merci pour votre attention!**