

Presentation by David Wright, Director, European Commission, Internal Market and Financial Services DG

I am going to give a purely practical practitioner view of these two issues – regulatory competition and subsidiarity. I would like to make some general remarks about how I see the Member State trends. Secondly, to talk a little bit about subsidiarity because I believe the debate is subtly changing and, thirdly, to say how we are applying these principles. I think the reality today is, Chairman, that we have two different schools in Europe.

The first school is a school that prefers detailed harmonisation rules, strong levels one and two of the Lamfalussy process. Very much at the heart of that is the concept of a level playing field, strong enforcement, a strong role and an increasing role for a coordinated EU regulatory approach whether we are talking about CESR, Eddy Wymeersch on my right, or the new CEOPS organisations, a primary focus from his group of strong home country control and even some host country control if necessary, a strong belief in workers' rights and spreading across, of course, into the company statute, across-border mergers, transfer of seat and so forth, the protection of investors and particularly small investors and weak subsidiarity and by that I mean the need from the perception of this group to have a very strong collective European response.

Contrast that with the second group of Member States who would refer lightly regulatory touch, principles, principles-based level one regulation under the Lamfalussy process, as few details as possible in level two, a strong role for regulators at level three, although not binding rules in some cases and even regulatory competition, certainly less emphasis on workers' rights and strong subsidiarity. In between those two schools we have perhaps one or two Member States who float and we do not know yet perhaps where our new Member States will line up but that is the real politic that practitioners face every day and that's the challenge of the Commission – to find a balance between those two schools and for us to broker compromises in these very difficult areas.

So, my judgment from a purely political practitioner view is that there is a rather tepid appetite for strong regulatory competition between the Member States and, as I said, I believe the formation of these new organisations is to some extent a signal of that. This contrasts rather strongly it seems to me between what's going on in Europe and the United States where regulatory competition takes place not just between the states but even between federal regulatory agencies. If you think about who regulates the banking and savings sector in the United States, there's the office of Controller of the Currency, the Federal Reserve Board, the office of Thrift Supervision, the Federal Deposit Insurance Corporation, the PCAOB, there's even talk of a new agency for regulating Freddy Mack and Fanny May, the SEC has a role, as do state authorities and I think that is a very different situation from the situation in Europe.

Turning now to subsidiarity – we all know that subsidiarity is a strong principle of the EC Treaty. There are elements therefore that the Commission must follow in examining any proposals we make in conformity with subsidiarity. The issue under consideration must have trans-national aspects, which cannot be regulated satisfactorily by the Member States on their own. Action at Community level would produce clear benefits by reason of scale or effects compared to action by Member States and, on top of this strong principle, we have of course the principle of proportionality, which means we should not take action to go beyond what is necessary to achieve the objectives of the treaty. What is beginning to change, however, is the additional series of criteria required for Community action and, of course, subsidiarity in

the emerging European Constitution, which was agreed here in Brussels a few weeks ago, which enshrines in the new protocol, the principle of consultations.

We have in our work in financial services embedded that principle and believe it is a very strong one and should be used for all our work. It involves the new protocol on subsidiarity, reinforced involvement of national parliaments - we have to justify all our draft legislative acts in a deeper way, the assessment of proposals' financial impact and particularly qualitative and, where possible, quantitative indicators. That means cost benefit analysis, it means impact analysis, it means evidence based policy making and there is now of course an early warning system for national parliaments to put up an orange flag when one third of them consider that the act is going beyond what is required at Community level.

So there is a subtle change in here in reinforcing the impact of subsidiarity. Of course that depends on whether the Constitution will be ratified. As far as the application of subsidiarity in our work, I can point to one or two areas. For example, regulatory action is only undertaken when it impacts on the free movement, free movement of services or capital or, as Eddie mentioned, the freedom of establishment. One of the measures we foresee in our action plan concerns the protection of shareholders' rights and this planned instrument which is coming soon will aim at solving the problems for the cross-border voting of shareholders. We have used detailed cost benefit and impact analysis for our work in the area of transparency. We need to make sure that the planned regulatory action is proportionate. That is why we have decided on two important - I stress important - forthcoming recommendations in the area of remuneration regimes for directors and on independent directors. No regulatory action is foreseen but both recommendations are drafted on a principle-based approach and we believe that they will actually guide the market and guide companies as, for example, our work did earlier in the audit approach.

On corporate governance and the code of corporate governance we have not decided to follow the idea of a European corporate governance code. What we are trying to do is converge the principles together and try to take account through that process of different legal and cultural practices.

So, my conclusions, Chairman: at the end of the day, we have a difficult political and organisational set of choices before us but we also have some real politic and I think we should be very aware that somewhat simplistic formulations about just dealing with procedure and leaving alone the substance. All I would say is I wish life were as simple as that. Thank you.