

# ZENTRALER KREDITAUSSCHUSS

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## **Comments of the Zentraler Kreditausschuss<sup>1</sup> on the FSAP Evaluation**

### **Part I: Process and implementation**

**January 2006**

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<sup>1</sup> The ZKA is the apex organisation for the German banking industry's five umbrella associations. These associations are: Bundesverband der Deutschen Volksbanken und Raiffeisenbanken e.V. (BVR), Bundesverband deutscher Banken e.V. (BdB), Bundesverband Öffentlicher Banken Deutschlands e.V. (VÖB), Deutscher Sparkassen- und Giroverband e.V. (DSGV), Verband deutscher Pfandbriefbanken e.V. (vdp).

### **Recommendation 1:**

When drawing up policy programmes, ensure that the measures contained therein are prioritised appropriately and, where relevant, are subject to strict deadlines which are politically agreed as widely as possible by European Parliament/Council and implicitly supported by the industry. Strong monitoring mechanisms are required.

### **Feedback/Comments:**

The ZKA (Zentraler Kreditausschuss) lends its full support to this Recommendation. In our view, any successful policy programme hinges on the following **five key preconditions:**

The **creation of an integrated European single market for financial services** needs to be the manifestation of the interest of customers, providers and EU institutions, i.e. it needs to reflect the interests of a broad majority.

- I. In order to realise this interest, EU institutions need to agree on **specific guiding principles** concerning market participant involvement.
- II. Before agreeing any policy programme, the defined guiding principles need to be subjected to an **impact assessment**.
- III. The various EU institutions should agree their policy programme only after these preparatory steps. This policy programme should then ensure coherence of the individual guiding principles and needs to be accompanied by a clear **to-do list with implementation priorities as well as strict but also realistic deadlines** for all parties involved.
- IV. During the implementation of said policy programme, no measures may digress from the overall goal nor from the guiding principles established under I. This means that the various legislative bodies must become subject to a system of checks-and-balances, i.e. a **mutual monitoring which will be an enticement of discipline** on the part of legislative bodies; this is a key precondition for successful implementation of the policy programme.
- V. Implementation of the policy programme must be followed by an analysis of target performance and of compliance with the guiding principles. This analysis should take place in the form of an **ex-post review**. It should include all market participants. This follow-up process needs to address any **potential need for remedial action**.

**The Commission would be interested to learn from respondents:**

- **What has been your personal experience of the implementation process of the FSAP measures?**

Answer:

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- **Do you consider any of the measures introduced under the FSAP redundant or ineffective?**

Answer:

Generally we are of the opinion that at the present point in time it would be premature to assess the effectiveness of the measures as a whole. There is, however, anecdotal evidence where it would appear that the publication of new regulatory proposals has not been preceded by a careful coordination with pre-existing EU legislation. Level 1 and Level 2 appear to be similarly marked by a conspicuous absence of any comprehensive and systematic prior impact assessment. Allow us to give a number of examples in the following paragraphs in order to substantiate our point of view, i.e. redundancy or inefficiency inherent in individual initiatives.

- Take "Operating and financial review" and the "Interim Financial Information", for instance: notwithstanding the fact that these areas have already received sufficient coverage by provisions under the modernisation and transparency Directive, **CESR's Level 3 recommendations on the implementation of the Prospectus Directive** incorporates further, detailed accounting provisions. FSAP requires one coherent set of regulatory provisions which is consistent *per se* and transparent for all users. Hence, identical subject matters should not become subject to multiple regulation under different Directives and/or Regulations.
- **Directive 2002/65/EC of the European Parliament and the Council of 23 September 2002** on distance marketing of consumer financial services stipulates certain information obligations for banks. These obligations by far exceed the requirements under the previous regime. The banking industry had to pay a high price for implementation of these new provisions. The new requirements not only impose the need to draw up special information material and to make this available / to deliver such material to customers. So as to evidence the point in time when the revocation deadline actually began, banks covered by the scope of the regulation were also obligated to develop and run a complex documentation system which also has to allow them to prove that they duly provided such statutory information to the consumer.

On aggregate, the new statutory requirements have driven up the costs for distance marketing of financial services. These costs have to be paid by banks. In the final

analysis, this means that, also for consumers, these services have become more expensive. More often than not, clients have a difficult time in perceiving any additional benefit of this change. Hence, there have been many cases where this has led to customer complaints concerning "information overkill". Furthermore, the Directive stipulates information obligations that clash with existing requirements under other legal acts (notably but not limited to EU Directive 2000/31/EC on electronic commerce). Based on the foregoing reservations and in order to prevent any future, unnecessary cost increases, we should like to appeal to the institutions involved in the regulatory process to address the shortcomings highlighted in the regulatory process.

- **Directive 2002/92/EC of the European Parliament and the Council of 9 December 2002 on insurance mediation** leads to considerable burdens for the economy. A major effort is required especially for the logistics involved in implementation of the Directive. The same goes for the insurance mediator's disclosure and documentation obligation. The Directive on insurance mediation failed to strike an even balance between the interests of the insurance mediator on the one hand and consumer protection on the other hand.
- At this point in time, any final assessment of the **Markets in Financial Instruments Directive (MiFID)** would be premature. The regulatory process at Level 2 will probably take until spring 2006. However, already at this stage, there is increasing evidence that at least some provisions (both at Level 1 and also at Level 2) feature an excessive degree of detail and are thus redundant. One example of an extremely high degree of detail are the Level 1 provisions on the most consumer friendly order execution. Yet, notwithstanding the foregoing, the Commission plans to add even further specifications at Level 2: It now aims to define the order in which criteria need to be taken into account during order execution (prioritisation of the applicable criteria). There is the potential danger that all of this will render said provisions practically unmanageable. Also with regard to investor interests, such an outcome would be utterly counterproductive. The same reservation applies to the provisions on customer information. MiFID *per se* already contains clear provisions in this regard; MiFID clearly specifies the timing and content of information that has to be made available to the client. The high level of detail contained in the implementing measures would suggest the redundancy of at least part of these provisions. This is especially true given the fact that part of these provisions are but reaffirmations of Level 1 provisions. There is no doubt that the plethora of detailed provisions will come at the expense of service efficiency. In the final analysis, this creates costs which could have been avoided and, *de facto*, these costs will eventually have to be borne by the investor. Take, for instance, the comprehensive documentation requirements that are pervasive across all areas of MiFID, and where the rationale is at least not immediately obvious: e.g. the requirement to keep detailed records of each and any advertising activity over a period of at least five years.

- Directive 2002/87/EC of 16 December 2002 on the **supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate** constitutes a particularly complex issue. This is due to the fact that it touches upon both, the area of banking supervision and the area of insurance supervision. Its complexity is further compounded by the fact that - via the consolidated supervision – it also adds a further supervisory dimension at the level of the conglomerate. Yet, the trend towards one-stop financial services is still fairly contained. Together with FSAP's overall scope, this matter begs the question whether there was an objective justification for the time pressure with which the Directive was adopted. From the point of view of the banking industry, it would certainly have been helpful if, at an early point in time, the Commission had provided model calculations on the practical impact and specific mechanisms of the capital adequacy calculation methods contained in the Directive.
- Directive 2005/60/EC of 26 October 2005 **on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing** (Third Money Laundering Directive) gives rise to special obligations for banks concerning certain politically exposed persons (PEP) as well as beneficial owners of certain unlisted companies holding 25 % or more of shares/voting rights. Yet, in a negation of industry calls, both regulatory areas failed to consider the practical implications, i.e. how banks could realistically implement these newly imposed requirements in a legally reliable manner. The definition of PEPs, their immediate family members or persons known to be close associates, for instance, is still far too wide-ranging. The EU Commission also turned down banks' request for drawing up a corresponding and regularly updated EU list. The reason given by the Commission for rejecting this proposal was that the logistics of providing such an official list would be impossible. Concerning the respective beneficial owners, however, the Directive could have imposed an obligation on such beneficial owners to submit a corresponding declaration to banks; as an alternative, Member States could have been legally obligated to make corresponding entries into existing registers. On the other hand, however, whilst negating a further aspiration voiced and justified by the banking industry for many years now and notwithstanding the fact that amongst experts there will not be the least doubt that only specific typologies are suitable in order to help banks implement and fine-tune their research systems so that they can filter out those transactions from the daily masses of transactions where there indeed is a danger of money laundering and/or the funding of terrorism, this very Directive merely contains a non-committal "feed-back obligation" by FIUs (Financial Intelligence Units).
- **Do you agree that the fact that the FSAP was introduced as a package was a key driver in the programme being largely adopted by the target date?**

Answer:

Yes, because the consolidation and aggregation of various singular measures into one overall package was a key prerequisite for timely adoption and implementation of the individual measures. As a result, this package was then met with widespread support by EU institutions and market participants. This is crucial for any regulatory project. For a more detailed discussion of the key preconditions for successful action programs cf. our comments on Recommendation 1.

- **Please rank the 3 elements of the process involved in adopting the FSAP programme that you would consider the most important.**

Answer:

1. Introduction of the Lamfalussy procedure
2. Transparency and a thorough consultation process
3. Widespread support of market participants

We feel that the following issues will be vital to any future measures in this context:

1. There needs to be a prior comprehensive and systematic impact assessment (cf. "better regulation"),
2. Both at Level 1 and at Level 2, there needs to be a limit to the level of detail involved in the provisions (cf.: "high level principles").

**Recommendation 2:**

Continue to apply Lamfalussy approach to the elaboration of financial services legislation, giving due regard to appropriate timeframes for transposition and consultation and appropriate calibration between the different levels.

**Feedback/Comments:**

Generally, we support the Recommendation. Despite initial teething problems due to an excessive degree of detail at Level 2 and Level 3 and partly also owed to excessively short consultation deadlines, the Lamfalussy approach is evolving into an important asset for the integration of European financial markets. If and when they have been drafted in cooperation with market participants, the Recommendations of the Committology committees promote convergence as well as harmonisation of rules and practices which may potentially feature strong national differences within the EU-25. Yet, there also remains one further *conditio sine qua non*: in order to secure the political legitimacy of the Lamfalussy approach, the European Parliament and Council shall and must retain their participation right.

Regarding the statement on page 12 of the consultation paper that without Lamfalussy the framework Directives would have had much more detail, we are sceptical whether that conclusion is correct. The level of detail incurred collectively at Level 1 and Level 2 during the implementation process of the Lamfalussy Directives (e.g. MiFID, Market Abuse Directive) means that the banking industry is faced with an unprecedented degree of complexity. Occasionally, there is overregulation. This results, on the one hand, from a degree of Level 2 detail that is already high *per se* and which is then further compounded by the parallel processing of the Directives at Level 1 and Level 2. The Lamfalussy procedure must not pave the way for a regulatory spill-over in the form of a steadily increasing stream of details.

**The Commission would be interested to learn from respondents:**

- **What is your assessment of the workings of the Lamfalussy structure thus far?**

Answer:

We have always been supportive of the structure and continue to be so (compare our remarks to Rec. 2). Having said that, we continue to be sceptical as to the amount of detail in rules which are not of a purely technical nature. Especially where rules **on Level 2** are closely connected with civil law rules, we would favour a principle-based approach.

Furthermore, caution required: Any subsequent levels must not give rise to any new substantive provisions which would exceed the scope of the regulatory framework created

at Level 1 and Level 2 and its inherent, basic principles. In other words: there must be no so-called “shadow regulation”. Especially Level 3 must therefore be confined to an interpretation and application of the provisions defined at Level 1 and Level 2. Level 3 shall and must absolutely not incur any new, additional regulation.

Furthermore, the transparency of the work of CESR and CEBS would require further enhancement. Transparency of supervisory action is a prerequisite for participation by market participants (cf. below). Yet, it holds a special stand-alone significance even beyond this (e.g. publication of joint determinations of the supervisors concerning certain interpretation issues). CESR and CEBS seek to ensure the required degree of transparency through their websites and by means of publishing their annual work programmes; yet, what would be extremely helpful is further information concerning working methods, the approach within CESR and CEBS and also the outcome of committee sessions as well as working group sessions. Transparency on the part of supervisors (supervisory disclosure) is the indispensable counterpart to disclosure on the part of banks which is clearly endorsed by Basel II. Also at the level of supervisors, this may further enhance a positive "market discipline".

- **Do you think that the system allows for adequate input from stakeholders?**

Answer:

In general, we have found the system to be open and transparent in the way it consults with its stakeholders. As explained in our earlier comments on Recommendation 3, there need to be safeguards ensuring sufficient deadlines for consultations with market participants and various interest groups. Furthermore, it is decisive that their comments be sufficiently validated and taken into account. Therefore, we find feedback documents following consultation to be particularly useful tools that should be regularly used (as set out in Rec. 3).

Implementation of half-day public hearings on individual consultation papers as well as the establishment of a Market Practitioner Panel which respectively belongs to CESR / CEBS, constitute first steps in order to achieve an integration of stakeholders immediately affected by the supervisory standards which is indispensable. However, given the importance of the topics negotiated at EU level and due to their complexity, further steps should be taken in order to ensure increasing integration of practitioner’s know-how into supervisory activity.

**Recommendation 3:**

Continue to consult widely before and during the introduction of new legislative proposals, in accordance with the Commission's "better regulation" policy, keeping in mind the practical constraints of the exercise, setting realistic timetables, and drawing up feedback statements.

**Feedback/Comments:**

Consultations create transparency and are thus also an essential element in any endeavours to achieve better regulation. A set institutional framework ensuring consultations "at eye level" for all market participants is vital for this. Generally, the four-step approach presented by the European Commission is to be welcomed. Yet, transparency needs to be guaranteed at all levels of the process. Furthermore, stakeholders need to be given sufficient deadlines for their comments. Unfortunately, this is not yet the case for all procedures. We do not wish to call into question the overall gist of the project which is, essentially, perfectly correct. Yet, for instance, take the European Commission's procedure for the creation of a common frame of reference for the purposes of a more "coherent" European contract law. The timetable for this project is ambitious. Hence, the deadlines for the corresponding consultation process with the Commission's appointed expert network (CFR-Net) are extremely short. This gives rise to doubts as to whether there will still be enough room for an in-depth discussion of the regulatory proposals; a discussion that was initially both warranted and intended.

In order to give market participants equal opportunities concerning their applications for participation in expert groups, public hearings and joint events between EU institutions and industry representatives, there is an urgent need for public announcements. These will have to be made as early as possible. Frequently, the public only gets to know about expert panels once the members have already been selected. Although expert panels are especially helpful for a first assessment of the planned actions, they cannot replace a broad based consultation of all market participants and interest groups. Hence, the outcomes from expert groups need to be submitted to all market participants and interest groups in order to achieve a broad-based consultation (cf. also four-step approach).

In this context, we should like to refer to the Commission documents COM (2002)704 and SEC (2005)791 which stipulate standards for stakeholder consultations and recruitment of consultant experts. There has to be strict compliance with these provisions.

**Recommendation 4:**

Make the maximum use of the FIN-USE forum; encourage participation from users' organisations in consultation.

**Feedback/Comments:**

Any legislation must always aim at creating an acceptable balance between the interests of corporations on the one hand and consumer interests on the other hand. Hence, on principle, all market participants should be heard during consultation rounds.

**The Commission would be interested to learn from respondents:**

- **What has your perception been of the volume of consultation involved in the elaboration of FSAP measures? (Please include here consultation exercises carried out by the Level 3 committees prior to providing advice to the Commission).**

Answer:

In our understanding, this question is primarily geared to consumer groups.

- **Have consultation exercises been specific enough in their focus for your area of interest/ business/expertise?**

Answer:

In our understanding this question is primarily geared to consumer groups.

- **What is your view on the potential benefit of consumer input to consultation exercises?**

Answer:

In our understanding this question is primarily geared to consumer groups.

- **Would you be willing to make yourself available for involvement in forum groups/ working parties/ advisory panels on future policy developments?**

Answer:

In our understanding this question is primarily geared to consumer groups.

**Recommendation 5:**

Make full use of the flexibility of the Lamfalussy process in providing adequate legislative responses to unexpected external events.

**Feedback/Comments:**

A timely analysis of unexpected events by the competent authorities is called for and therefore receives our full support. Yet, great caution is required in adopting legislative measures as a response to external events. Should there be a sound case for short-notice changes, then this must not prejudice the principle that the legislative mandate is confined to Level 1 and Level 2. Furthermore, there need to be safeguards for careful consultation of all market participants. The cases mentioned in the consultation paper primarily involve fraud. And more often than not, this fraud cannot be prevented by new legislation. At any rate, before responding to unexpected events with new legislation, there needs to be a closer analysis of the root causes along with an impact assessment. Overhasty measures which, in the final analysis, contradict the goal of better regulation, should be avoided.

There has been a recommendation to apply the Lamfalussy approach to such cases. In this regard, we should like to point out that – with the exception of the market abuse Directive – the Lamfalussy procedure has not been applied to the measures mentioned in the Consultation Paper. These measures were largely triggered or favoured by corporate scandals.

**Recommendation 6:**

Where possible, use regulations in order to ensure a level playing field in financial services and avoid Member States adding extra measures (“goldplating”).

**Feedback/Comments:**

We think that the choice of the proper implementation tool is a matter of utmost importance for the acceptance of the Lamfalussy procedure. In our view, the choice of the most suitable instrument is not only a purely technical legal matter, but has important implications for the implementation process. For this reason, we believe there is a **need for a differentiated approach** when it comes to the choice between the **use of Directives versus regulations**. Hence, a more suitable instrument can only be chosen after a review on a case-by-case basis.

Essentially, the eligible regulatory toolkit is comprised of Directives, Regulations of the Commission, Regulations of the Council and of the European Parliament. Commission Regulations take immediate effect within Member States. Hence, whenever there is a need to safeguard across various Member States homogenous and standard legal settlements for specific scenarios where, for instance, an implementation duty results under international law and where therefore Council and European Parliament cannot accommodate (national) idiosyncrasies in their consultation and adoption process, Commission Regulations are the legal instrument of choice. **Regulations** of the Council and of the European Parliament should be considered in cases where, on the one hand, the scenario which needs to be regulated offers the EU some room for manoeuvre allowing accommodation of Member States’ views and of the view of EU parliamentarians, yet where on the other hand there is also a need for safeguards as to homogenous EU-wide instructions and application.

The **instrument of a Directive**, however, is worth particular consideration in those cases where there are considerable differences between national legal systems and where a Regulation would interfere deeply with the national legal systems or where this would constitute a breach with the overall philosophy of this legal system (*Fremdkörper*). In such cases, a Directive will usually offer the most appropriate solution since it will provide Member States with an useful basis for implementing newly developed EU-standards into existing national law. The alternative – namely to adjust conflicting national law – will frequently prove unsuitable both for time considerations and also because of the need to ensure legal consistency across all sectors of the economy.

We should like to point out that also a Regulation may incur the need for adjustments within the national law of Member States. Important issues may, for instance, arise with regard to the prevailing paradigm triggered by existing rules. Hence, unless such issues are sufficiently clarified before the actual application, all parties involved will be affected by considerable legal uncertainty. In this regard, Directives offer the added benefit that all critical points can be scrutinised with a view to compatibility issues between European and national legislation and that this scrutiny takes place in the form of a structured legislative procedure.

Essentially, for and on behalf of consumers and banks alike, the goal of a level playing field concerning the single market for financial services imposes the duty of finding a homogenous, EU-wide solution. This process needs to avoid any additional regulatory requirements by individual EU Member States, i.e. the so-called "gold-plating". Gold plating always becomes an issue when a European provision stipulates the need for a European passport or when - for service providers from other Member States seeking to enter the domestic market - Member States are not allowed to stipulate requirements that are more stringent than the EU standards. Yet, this is not the same as the adoption of national rules and regulations in order to complement European minimum standards (minimum harmonisation). Also in future, whenever Member States feature a corresponding regulatory need, they need to be able to draw upon such rules and regulations that would exceed the European provisions. Otherwise, the corresponding provisions would already have to be covered by the scope of the European provision. This would mean they would become mandatory across all Member States. In other words, they would become mandatory even in those Member States where this is not necessary: after all, certain Member States may feature a complete absence of certain market practices or types of abuse. However, such complementary national provisions must not serve as a disguise for artificial barriers to foreign competitors' market access.

**Recommendation 7:**

Limit the use of the “fast track” procedure to those proposals with strong prior inter-institutional backing.

**Feedback/Comments:**

First of all, we should like to point out that we feel that the "fast track" procedure is generally fit for purpose when it comes to reaching swift political agreement on important legal projects based on previously agreed EU positions. Hence, the fast track procedure constitutes a suitable instrument for effective and efficient regulation. This notwithstanding, to date, this fast track procedure and its accompanying informal trilogue between the institutions of the European Union still lacks any kind of transparency for market participants and EU citizens. It is virtually impossible to keep track of the latest state of affairs. This is due to the extremely short deadlines and it is also owed to negotiations which – contrary to Parliamentary committee hearings, for instance – always take place behind closed doors. It is also due to the simultaneous processing by all three institutions. Since the most important compromises are agreed during these informal talks, this frequently leads to findings which are neither comprehensible nor predictable for the public and which are therefore completely removed from any assessment by market participants. Although the second reading of the trilogue is encumbered by similar problems, the past two years have seen the fast track procedure evolve into what has now become almost a standard procedure. This means, that there is a particularly urgent need for addressing the transparency situation in this area. The respective negotiating documents of EU institutions should be made publicly accessible at least in the informal trilogue before meetings.

**The Commission would be interested to learn from respondents:**

- **What is your impression of the use of Directives versus regulations? Has the introduction of the Lamfalussy structure improved the application of Directives in the Member States?**

Answer:

For our answer to the question as to whether a Directive or a Regulation is the more appropriate solution, cf. our comments on Recommendation 6. It is still too early for any (final) assessment as to whether the introduction of the Lamfalussy process has led to an improvement of the application of Directives within Member States. Any answers to this question will depend on the outcome of Level 3 and 4 of the Lamfalussy procedure.

- **Have you been affected by amendments to proposals made by the European Parliament or Council? What impact do you think these amendments have had on the effectiveness of the adopted measure?**

Answer:

Generally, we feel that the European Parliament's right of participation in the regulatory process is an indispensable element. Just like proposals tabled by the Commission and the Council, the efficiency of its motions for amendments may only be assessed on a case-by-case basis and should generally not be called into question in the framework of the present consultation process.

**Recommendation 8:**

Take into account the necessity to react and adapt existing measures after their adoption and avail of the possibilities offered by the Lamfalussy process.

**Feedback/Comments:**

The Lamfalussy procedure offers sufficient opportunities to react in a flexible manner if needs be. Yet, the necessity for subsequent adjustments has to be assessed under strict compliance with the better-regulation-principles (prior impact assessment and prior consultation of market participants). This explicitly also applies to cases where there is implementation of measures that go beyond the initially envisaged framework (cf. for instance page 27 of the Consultation Paper). We would therefore once more like to strongly press for future compliance with the five preconditions highlighted in our earlier comments on Recommendation 1.

**Recommendation 9:**

Through intense prior consultation before drawing up legislative programmes, ensure appropriate balance between short target timeframes and the ability to attain high quality. Make allowances in the programme for the annulment or simplification of existing legislation.

**Feedback/Comments:**

We wholeheartedly support this Recommendation. In this context, 'better regulation' may sometimes also translate into 'less regulation', i.e. that a given scenario which needs to be regulated may not necessarily require a completely new law. Instead, there should always be a grass-roots review, i.e. a review as to whether a market solution or self-regulation may not be the more effective solution. This review (top-down versus bottom-up approach) should be embedded at an early point in time into the consultation process.

A review of existing regulatory provisions with a view to streamlining excessive red tape is just as important as the measures discussed in the previous paragraphs. In order to achieve this goal, the abrogation or simplification of laws shall be permissible. After its completion, the pilot project initiated by the EU Commission in three sectors should be rolled out to the entire economy.

**The Commission would be interested to learn from respondents:**

- **What is your assessment of the balance reached between the quantity and quality of the measures adopted?**

Answer:

Any substantiated assessment of the quality of the measures would appear premature at the present point in time. FSAP's key priorities were aimed at an integration of securities markets and key account markets. Whilst we generally explicitly welcome the initiatives conducted by FSAP to date, any clear evidence that the various measures adopted have indeed contributed to a genuine single market in financial services, is still pending. One of FSAP's essential components, i.e. MiFID, is still in the middle of its European legislative process; also the transparency Directive is currently undergoing Level 2 of the Lamfalussy procedure. A number of further legal projects are still in the process of national implementation. We therefore welcome the European Commission's goal of carrying out a complete economic and legal FSAP review by 2009. Implementation of the comprehensive FSAP measures tied up a considerable amount of resources; investment firms - and partly also their clients – had to contend with the resulting considerable implementation and transition costs during adjustments of their operational workflow.

Last but not least on the foregoing grounds, it is important to provide hard and fast evidence that these investments will, in the final analysis, lead to a functioning legal framework for cross-border financial transactions.

- **What is your assessment of the appropriateness of the adopted measures compared to the initial proposals?**

Answer:

We think that extensive consultation led to better quality during the process. Sometimes, though, too much detail was introduced with a view to balancing diverging, and mostly legitimate interests. In such cases, a step back and the introduction of a more principle-based approach would be an alternative worth considering.

Concerning the expansion of the initial action plan please cf. our comments on Recommendation 8.

**Recommendation 10:**

When drawing up the follow-up to a completed programme, ensure that emphasis is placed on the correct implementation and enforcement of the adopted measures and that new measures are only proposed where significant gaps have been identified.

**Feedback/Comments:**

Given the host of legislative measures in the context of the Financial Services Action Plan, market participants have frequently pointed to the risk of over regulation. Their reservations are absolutely warranted. The Commission has responded by emphasising the future deployment of better regulation procedures. At this juncture, we would like to point out that, in future, these procedures should also be applied by all other EU institutions – at least whenever there are fundamental changes in the legislative process. We therefore explicitly endorse this Recommendation.

**Recommendation 11:**

Continue and extend the practice of offering transposition workshops and technical assistance to Member States in order to facilitate transposition.

**Feedback/Comments:**

At present, the transposition of European law into national law cannot really be deemed as satisfactory. As far as the market abuse Directive and also the prospectus Directive are concerned, we feel that there are many Member States where the implementation process lags far behind schedule. Despite an extension of the implementing deadline, the same development cannot be ruled out with regard to MiFID, either.

We feel that implementation workshops aimed at bringing together the competent national authorities and the Commission would be helpful in this regard. This would assist the implementation process and help to clarify potential open issues that may result in the course of implementation. It would also help to identify the root causes of such delays at an early point in time. Yet, in this context, market participants feel that greater transparency with a view to the issues under deliberation in such forums and the outcomes thus achieved would be greatly appreciated. Hence, market participants should be given the opportunity to submit their comments.

**The Commission would be interested to learn from respondents:**

- **Can you recommend any further practical steps that could encourage greater compliance with the requirement to transpose and implement legislation in the Member States?**

Answer:

It might be helpful to split up the workload and introduce differing time schedules for individual issues in extensive Directives like the MiFID. This would make it easier for the Member States and the industry to compare developments in different states.

We believe that CEBS' guidelines for implementing a common European framework for supervisory disclosure are a well-structured and comprehensive tool for a comparison of supervisory models and methods throughout Europe. The disclosure of such information would promote the internal market.

A disclosure framework such as proposed by CEBS would make it easier to compare national texts that implement Directives, and to compare the ways in which Member

States exercise the options and national discretions available to. Also, meaningful comparisons of supervisory practices across Europe could be drawn.

For these purposes a common format should be used, consisting of a series of simple and similar information tables in standard formats which can be posted on websites.

Disclosures should be accessible via the Internet, using both the Lamfalussy bodies' websites and websites of the competent national authorities.