

# ZENTRALER KREDITAUSSCHUSS

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The Honourable  
Charlie McCreevy  
Member for Internal Market and Services  
European Commission

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## **EU Commission's White Paper on Financial Services Policy for the Years 2005-2010** AZ: EG-BIM

Dear Commissioner McCreevy,

On 5 December 2005, the European Commission published the aforementioned White Paper. The ZKA<sup>1</sup> (Zentraler Kreditausschuss) endorses the goals contained therein for the period up to 2010. We explicitly endorse the consistent implementation, legal enforcement and continuous evaluation of the existing regulatory framework and the initiatives under the Financial Services Action Plan (FSAP). For future regulation this involves the consistent application of the agenda for “better regulation”, a plan that has also been highlighted by the EU Commission. We should like to affirm our overall support for the EU Commission's declared “Leitmotiv” of “dynamic consolidation” for the purposes of an integrated, open, competitive and economically efficient European financial market. The respective prudential supervision regime is one of the mainstays of such a financial market. In this context we support, as one of the next steps, an improvement of regulatory cooperation which, in turn, will lead to supervisory convergence across the EU.

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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).

A review of the FSAP's focus to date reveals that the past years have primarily seen a push for comprehensive measures facilitating integration of the markets for securities and wholesale banking. At this juncture, a regulatory pause along with a review of the market impact of the regulatory and non-regulatory measures that have been adopted so far would seem opportune. As far as the banking industry is concerned, FSAP implementation ties up a considerable amount of resources; institutions providing financial services – and partly also their clients – have to contend with considerable costs for adjustments of their operational workflow resulting from the FSAP process. Hence, it is important to evidence that these investments will eventually lead to positive outcomes both for consumers and also for the banking sector. We therefore welcome the European Commission's plans to perform a complete economic and legal review of the FSAP by 2009.

In its White Paper, the European Commission underlines that even after FSAP implementation more will need to be done in order to achieve an integrated single market for financial services. Hence, FSAP implementation and enforcement have to be accompanied by an open dialogue on regulatory action in areas where there is an acute and demonstrable need for action. New regulation shall and must not come at the expense of established, efficient and customer friendly business models. New or ongoing initiatives must not interfere with existing infrastructure in a way that would eliminate such business models; whilst not limited to, this caveat particularly applies to the areas clearing and settlement as well as payment transactions. Here, the decision on the correct business model should always be left to market forces.

After this initial outline, the following paragraphs will provide a more detailed presentation of the ZKA's position:

## **I. Consistent implementation, legal enforcement and ongoing review**

Already in the context of the Green Paper on Financial Services Policy (2005-2010), the European Commission highlighted that its prime focus shall be on implementation and enforcement of the measures associated with FSAP and that this will engender further

positive consequences for the European economy thus effectively doing away with the need for an FSAP follow-up programme (so-called FSAP II). We welcome this move. We, furthermore, share the European Commission's regrets over the sluggish implementation of Community legislation in a number of Member States; yet, at this juncture we should also like to highlight that Germany generally tends to be among the group of nations that are early adopters when it comes to implementation of community legislation. Yet, this ties up a considerable amount of resources on the part of the economic players affected by the implementation process.

In order to prevent additional regulatory requirements, i.e. so-called “goldplating”, we endorse additional measures by the European Commission aimed at monitoring Member States' implementation progress and securing correct implementation. “Goldplating” always becomes an issue when the Directive 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, such rules and regulations exceeding European provisions need to remain open to them (subsidiarity principle). Otherwise, the corresponding provisions would already have to be covered by the scope of the Directive. 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 provisions adopted on the basis of subsidiarity must not serve as a disguise for artificial barriers to market access for foreign competitors. Yet, when it comes to timely implementation of Community legislation, we should also like to launch an appeal that all parties affected by the regulatory provisions shall be afforded adequate deadlines.

We share the European Commission's understanding that an ex-post evaluation of the Financial Services Action Plan (FSAP) as well as an ex-ante assessment of new regulatory measures constitutes a key priority of the European Commission for the next five years. Should this process reveal that certain regulatory projects have failed to reach their goal then we entirely subscribe to the European Commission's view that changes or even the complete abrogation of such legal measures adopted should be considered.

## **II. Consistent application of the agenda for “better regulation”**

We commend the European Commission on its plans to turn the agenda for “better regulation” into a consistent benchmark for the drafting of any new regulations that turn out to be necessary. Yet, in order to achieve a satisfactory regulatory outcome, it would appear absolutely essential that this approach also be embraced by the European Parliament and the European Council. Furthermore, this agenda should also be applicable to each and any Committology procedure. The experience to date shows that the Lamfalussy approach incurs the danger of an over-regulation and bureaucratisation of the markets. Often, the Level 2 and Level 3 provisions adopted by the European Commission, CESR and CEBS under the Lamfalussy procedure, feature an excessive level of detail.

However, consistent application of the agenda for “better regulation” also involves a comprehensive and open-ended consultation of market participants. What is indispensable for this purpose is an early integration, both, of consumers and of the financial industry. The burden of rising costs for financial services or a limitation of the range of products available that may result under excessively detailed regulatory provisions primarily affects not only the industry but also consumers.

Furthermore, a timely preparation of careful economic impact assessments is essential. Impact assessments would have to review the knock-on effect of new measures or changed measures on market structures, market behaviour and market performance. Here we could leverage the experience gathered with such mechanisms in the Netherlands and

the UK. If the cost-benefit analyses reveal, e.g., negative repercussions for competitive pluralism then such finding will have to be incorporated into any further actions taken.

In this context, 'better regulation' may sometimes also translate into 'less regulation', i.e. not trying to regulate each and every scenario. Instead, there should always be a grass-roots review, i.e. a review as to whether the more effective solution will consist in a market driven approach or self-regulation. This review (top-down versus bottom-up approach) should be embedded into the consultation process at an early point in time. In this context, 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. Laws may be abrogated or simplified in order to achieve this goal. To this end, the European Commission has launched a pilot project in three sectors; we would welcome post-completion roll-out of this project to the entire economy.

Last but not least, the principles of “better regulation” should inform not only forthcoming but also existing regulatory projects that are already being discussed (e.g. the new Consumer Credit Directive).

### **III. Financial market supervision**

In recent years, the European regulatory framework for the supervision of capital markets has seen considerable modernisation. This also applies to international accounting standards. Now, the regulatory framework for banking supervision will undergo the same modernisation process. Modernisation of this area features a high degree of harmonisation of the applicable legal provisions; its implementation needs to take place on the basis of existing standards that have already been agreed in the past.

Pivotal Directives (MiFID, Prospectus Directive etc.) are subject to the Lamfalussy procedure aimed at harmonisation of different supervisory requirements. The main tool for harmonisation of supervisory practices under the Lamfalussy procedure consists in “institutionalised cooperation” of national supervisory authorities in special committees

which were established for this very purpose. This approach is aimed at preventing divergent supervisory practices across Member States. Beyond this, the European Commission may initiate actions against Member States whose supervisory authorities fail to apply provisions under community law in a manner that is in line with community Directives (e.g. breach of contract proceedings).

Furthermore, it is correct that for clearly defined scenarios there will be a transfer of supervisory competencies to only one national supervisory authority. Above all, this concerns cases where companies need supervisory approval for internal risk models which – due to their cross-border business activities - are relevant in several countries.

Now, the next step will be to harness the opportunities thus outlined with the aim of achieving supervisory convergence in day-to-day practice. This next stage should clearly focus on further improvement of the "institutionalised cooperation" of national supervisory authorities. This should be accompanied by ongoing monitoring in order to double-check that this process takes adequate account of the practice of national (i.e. locally active) and international players (i.e. engaged in cross-border transactions).

#### **IV. Improvement of the fiscal environment**

In this context it becomes evident that the most rigid remaining obstacles on the road towards the single financial market consist in the diverse fiscal provisions within EU Member States. It is to be welcomed that - contrary to the Green Paper - the White Paper also contains a number of passages on VAT taxation seen against the backdrop of the EU fiscal law's regulatory framework. Having said this, however, this is not enough in order to improve the fiscal environment for cross-border financial transactions on a sustainable basis. Diverging fiscal provisions (e.g. in the area of determining profits for fiscal purposes and the basis for fiscal calculation, burden cross-border corporate activity and investment activity in the European Union) make capital procurement more difficult and reduce return on investment thus undermining the Euro-zone's appeal to international investors.

Let us be clear: We are not talking about different tax rates which should absolutely remain subject to competition between different fiscal systems. Yet, what is unacceptable is fiscal discrimination which translates into a restriction of the available offer or take-up of cross-border capital investment products as well as cross-border investments. Hence, paramount importance should be attached to further initiatives for an improvement of EC-fiscal provisions in the area of corporate taxation (e.g. the extension of the eligible scope for intra-group loss netting to include losses of subsidiaries and operations in other Member States), capital gains taxation (for instance substantive harmonisation of the tax burden and a clear concept clarification of the term 'interest rate' used by the Directive).

## **V. Extension of the European framework for investment funds**

We share the European Commission's assessment that the overall importance of the investment sector – last but not least due to its growing importance for old age procurement and wealth creation - has seen a sharp increase in recent years. Hence, it is appropriate to analyse if and to which extent the existing UCITS framework lives up to these changes and if and to which extent adjustments will be necessary; this applies particularly with a view to the overall goal of improved efficiency in cross-border investment transactions.

Yet, in this context one should also bear in mind that any further increase in the requirements concerning the distribution organisation will render the task of universal service for the general public, i.e. provision with essential products for the purposes of wealth creation on a sustainable basis, more complex. The more difficult and expensive the sales structures are, the less it is being guaranteed that also those (broad) sections of the population will be able to benefit from the advantages of financial products who are generally not particularly interested in capital market news and mechanisms. This conclusion is particularly evidenced by the '2002 Sandler Report' on the UK's distribution system.

From a competition point of view, the concept of being able to choose a depository from a different Member State is essentially to be welcomed. Yet, one *conditio sine qua non* – before realistic approval of this option could be given – is the high-level harmonisation of the rules for depositaries; the objective must comply with a high level of investor protection that is *on a par* with the protection level afforded by the UCITS depository under its mandate pursuant to Art. 7 UCITS Directive. Particularly the depository's control activity requires harmonisation. Any opening of markets without previous harmonisation would come at the expense of investor protection and would lead to supervisory cherry-picking. In order to safeguard the existing high level of investor protection, we feel that this activity should remain the prerogative of investment firms.

Any plans for regulation of hedge funds with a view to greater transparency should not be located at a European level. Instead, in order to also include offshore centres, such deliberations would have to take place at an international level.

## **VI. Dialogue with Non-EU Member States**

We would welcome an increasing dialogue also with non-EU Member States concerning matters of international regulation and prudential supervision in the context of global financial markets. Repeated, contradictory or even openly discriminatory national regulations are a barrier to global market entry of EU based investment firms and issuers. Therefore, in our view, regulatory dialogue with major global financial centres is indispensable. These talks could also address issues arising from obstructive or discriminatory Host State regulations. It would be easier to resolve and/or even prevent such issues in the framework of such talks than by means of ad-hoc initiatives. Hence, there should be regular dialogues with the most important financial markets and selected non-EU states (like, for instance, the US, Switzerland, Japan, China, India, Russia). Once these talks have been established, they might be expanded to include market participants' perspective. Furthermore, the shared trade policy of the European Union should address to a greater extent discriminatory financial regulations in a larger number of emerging

markets than is the case today since this will not be possible in the framework of the regulatory consultation process alone.

## **VII. Selected future projects**

### **a) Retail banking**

In the field of retail banking, the European Commission has already brought three major initiatives underway. These are: possible measures for a further integration of the European mortgage credit market (White Paper in 2006), the amendment of the Consumer Credit Directive (amended proposal of the European Commission dated 10 October 2005) and the proposal for a Directive on payment transactions in order to assist the banking sector in creating a single European payment area (SEPA) by the year 2010. These initiatives present the banking community with formidable challenges.

However, a comprehensive impact assessment involving a very careful cost-benefit analysis should be undertaken before any implementation of the aforementioned initiatives. Furthermore, any additional measures in the area of retail banking should become subject to in-depth discussions within the expert group which the European Commission proposed for this purpose. The European Commission should take action only if an acute need for action becomes demonstrable after careful consultation of market participants and previous comprehensive and systematic impact assessment.

### **b) Clearing and Settlement**

We welcome the fact that the European Commission has announced that it would first carry out an in-depth consultation process along with an impact assessment before deciding on any further measures concerning the need and content of a potentially forthcoming clearing and settlement framework Directive. The overarching goal is the creation of a level playing field for clearing and settlement within the European Union.

The findings of the ex-ante review mentioned above should serve to identify if and to which extent there is indeed a need for regulatory action in order to achieve this goal.

Yours sincerely,

For and on behalf of the Zentraler Kreditausschuss  
National Association of German Cooperative Banks  
Bundesverband der Deutschen  
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