



Fédération Bancaire Européenne
European Banking Federation

RP/DB
N° C0300

MEMBERNET

Brussels, 2 March 2006

Circulation: Executive Committee

Subject: ***EBIC response to the European Commission's FSAP evaluation Part I: Process and Implementation***

Dear Sir/Madam,

Please find enclosed for your information the EBIC response to the EC's FSAP evaluation Part I: process and implementation.

Yours faithfully,

Robert PRIESTER
Head of Legal Department

Enclosure: 1



European Banking Industry Committee

European Banking Federation (EBF) • European Savings Banks Group (ESBG) • European Association of Cooperative Banks (EACB)
European Mortgage Federation (EMF) • European Federation of Building Societies (EFBS)
European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)
European Association of Public Banks (EAPB)

Response to the European Commission's FSAP evaluation Part I: Process and implementation

The **European Banking Industry Committee** brings together European banking associations with a mandate to provide advice, assure a comprehensive consultation of market participants and ensure a representative industry view throughout the process of drafting, adopting, implementing and enforcing EU-financial legislation and thereby provide input for the European institutions and their relevant sectoral committees. It is among the declared aims of EBIC to advise the Commission on relevant legislative banking and cross-sectoral initiatives and any developments at Community level affecting the banking and financial services activities associated with the establishment of a European Single Market for financial services.

EBIC has been established by the main banking industry federations: the European Banking Federation (EBF), the European Savings Banks Group (ESBG), the European Association of Cooperative banks (EACB), the European Mortgage Federation (EMF), the European Federation of Building Societies (EFBS), the European Federation of Finance House Associations (Eurofinas) / the European Federation of Leasing Company Associations (Leaseurope), and the European Association of Public Banks (EAPB).

INTRODUCTION

EBIC welcomes the opportunity to comment on the first part of the European Commission's evaluation of the Financial Services Action Plan. We find this evaluation very useful and see it as a valuable step in the Commission's better regulation approach. At large, we find both the analytical approach and most of the conclusions appropriate. We also welcome the Commission's intention to follow the present report up with a second part to analyse the impact of the FSAP measures in more depth.

ANALYSIS OF THE STRUCTURE OF THE FSAP

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

The FSAP was an ambitious and impressive package of EU measures, including both legislative and non-legislative initiatives, which was based on clear political goals and key principles for the proper regulation of financial services. Delivering a final assessment of the FSAP would be premature at this stage given that many FSAP measures are still awaiting implementation at the national level. What can be said already however is that a huge effort was made by the Commission, European Parliament and Council as well as the Lamfalussy bodies to adopt the FSAP measures within the fixed deadline and that this objective has been met to a very large extent. However, time pressure must not work to the detriment of quality. When agreed for a longer period of time, timetables should be subject to review and, where necessary, adaptations.

As a core element for successful legislation, we believe that early and comprehensive involvement of the three EU legislative bodies as well as industry is essential to ensure that priorities and deadlines are adequately chosen, and that each of the measures complies with the overarching goals. We believe that unfortunately, this was not the case for all FSAP measures. In addition, given the fast moving global market environment flexibility of legislation must at all times be ensured. Legislative action should therefore increasingly rely on the Lamfalussy structure.

Given the complexity and the cost implications of the issues at stake, we believe that legislative proposals should systematically be based on impact studies to assess both general consequences and whether the benefits of envisaged measures outweigh the costs involved. Among other things the principle of proportionality should be taken into account with regard to any new measures envisaged.

While these are admittedly time-consuming exercises, we reiterate that the focus should be on quality rather than on speed. This is not only with a view to the Commission's own resources, but also those of the Member States and of stakeholders. In addition, considering the many complex interdependencies between different issues it is often preferable to first assess the wider impacts of adopted measures, and to only address new topics once that these are sufficiently known. We furthermore believe that going forward the Commission should set clear priorities and realistic timetables to constantly deliver the high quality of legislation it is aiming for.

However, we also believe that the biggest share of the necessary legislative actions has by now been accomplished. Apart from the finalisation of some remaining FSAP projects and carefully targeted legislation in some other areas, further market integration must at this stage be brought about through the transposition, implementation and enforcement of the adopted measures.

Ultimately, the real test case for the FSAP will be the functioning of the Lamfalussy process which is now entering its decisive stage: The implementation of FSAP directives into national law will show whether the Lamfalussy concept will avoid (excessive) gold-plating at national level. A higher degree of regulatory

coordination at level 2 of the process is certainly unavoidable to achieve convergence and it was clear by doing so that parts of the implementation work had to be moved from the national level to the European level so that agreement on common implementation standards can be achieved. While EBIC has generally been supportive of this approach, it needs to be assured that implementation measures at level 2 do not become overly prescriptive or too detailed and that Member States resist the temptation to add a further layer of additional measures when implementing FSAP directives into national law. The Lamfalussy process and hence the FSAP can only deliver the expected results, if these conditions are met. EBIC would therefore invite the Commission to closely monitor the implementation stage and assure the proper functioning of the Lamfalussy process. A further FSAP evaluation exercise should then be launched in around 2009 with the benefit of experience with the implementation of the FSAP measures at national level

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

EBIC does not consider any of the measures introduced under the FSAP as redundant or ineffective. However, it is the view of EBIC that at times, the degree of detail in the measures has been a cause for concern. High levels of detail can increase the risk of measures being ineffective. This is likely to become obvious with time once the implementation of individual directives has been achieved.

As an illustration of multiple regulation, the "Operating and Financial Review" and "Interim Financial Information" have received coverage by provisions under the Transparency Directive. CESR's level 3 recommendations on the implementation of the Prospectus Directive incorporate further detailed accounting provisions.

While it is still too soon to give a final assessment of the MiFID, there is already evidence that some provisions, both at level 1 and level 2, feature a very high degree of detail. For instance, the MiFID already contains clear provisions on customer information: it specifies the content and timing that has to be made available to clients. The level of detail contained in implementation provisions would suggest the redundancy of at least part of these provisions.

Looking at the 42 measures of the FSAP however, it is evident that there has been a clear focus on legislative measures. Going forward, it is the wish of EBIC members that in view of the better regulation principles that the Commission has committed itself to, it considers taking a more balanced approach between legislative and non-legislative measures from the outset.

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?

The adaptation of the FSAP as a package underlined the concerted nature of the Plan and helped to create a general atmosphere of reform, it also very likely facilitated the adoption of the measures contained in the plan within the fixed deadline.

It should however be acknowledged that the volume of new EU regulatory provisions requires an on-going, strong commitment of all the parties involved and continues to create challenges for industry and regulators alike: The UK Financial Services Authority (FSA) for instance says in its financial risk outlook for 2006 that it remains particularly concerned about the challenges facing many firms through to 2008 that arise from the need to comply with new EU laws, including the Capital Requirements Directive (CRD). The FSA says firms need to devote adequate resources, including senior management time, to address the implementation issues and manage their compliance risk.

The fact that the FSAP implementation coincides with the implementation of International Financial Reporting Standards (IFRS) and the implementation challenges resulting from the international fight against terrorism in which the banking sector plays a major role, might explain why the term “regulatory fatigue” was regularly mentioned in the discussions and consultations on the follow up to the FSAP. This again confirms the view that all efforts should now be on implementing and enforcing the legislation adopted under the plan. Likewise, assessments of the measures adopted should also be carried out, in order to assert whether the intended goals were met.

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

We regard the following three elements as the most important in relation to the adoption of the FSAP programme:

- **Transparency of the process / consultation:** a key reason for the success of the FSAP is the high degree of transparency that has been featured throughout the consultation periods as well as the strong involvement of all the parties involved, including the setting up of experts groups, both during the FSAP and post-FSAP. Experience has demonstrated that consulting and acting in a transparent manner is an efficient way of improving the quality of the legislation enacted.
- **Impact assessment and monitoring:** another element which is of importance to improve the quality of the proposed legislative measures relates to the evaluation of the legislation introduced, both ex-ante and ex-post. We therefore strongly encourage the Commission to increase its efforts in performing more comprehensive and systematic impact assessments and monitoring exercises.
- **Cooperation and coordination between the relevant bodies:** a key aspect of the Lamfalussy process is that it has created a context by which all the bodies involved in the law-making process (under the levels 1, 2 and 3) are encouraged to cooperate and to coordinate their activities. We regard this positive atmosphere as particularly important.

INFLUENCES ON TIMING OF THE ADOPTION OF MEASURES

4.1. Lamfalussy

What is your assessment of the workings of the Lamfalussy structure this far?

EBIC has been supportive of the Lamfalussy process and its extension to banking, insurance and pensions from the outset. The main pillars on which the Lamfalussy process is based – high level of transparency, achieved by extensive consultations with the industry; a split between framework principles and technical details; the strong implication of different law-making bodies, as well as the industry – are the right ones and have in our opinion contributed to a higher quality of legislation. As such, we support the general conclusions reached in their most recent assessments by the European Commission and by the Inter-Institutional Monitoring Group, as summarized in the document of the European Commission. As an example, we share the IIMG’s conclusion that “the Lamfalussy process is working well overall and has led to swifter preparation of legislation. There is better inter-institutional working and transparency”.

We also expect that despite the more labour intensive procedure that results from extensive consultation, time savings will become apparent once Level 2 measures will be adapted. However, this will not immediately be the case and the process should not be subject to overly tight time schedules.

We also support the view that the main risk related to the Lamfalussy process is that it could result in overly detailed and prescriptive requirements for the industry. We are of the opinion that this concern has materialised in a number of cases, and we would like to point to some measures proposed by CESR or by CEBS: In this context we would mention some of the ‘level 2’ implementing proposed by CESR in relation to the MiFID as well as some guidelines proposed by CEBS, such as some sections of the initial version of the guidelines proposed as regards the validation of models (“CP 10”), in particular those concerning the internal organisation of credit institutions.

In the absence of a clear methodology it is difficult to strike the right balance in this regard. Along the same lines, there is a need to ensure that Level 2 measures are as lean as possible but sufficiently clear to deliver consistent implementation throughout Member States. Experience will to some degree help to deliver these results.

Against this background, we welcome the Commission’s recent decision to undergo additional impact assessments in order to ensure that the principle of proportionality is fully respected¹. In this context, we welcome the strong commitment to the “better regulation” agenda at all levels of the Lamfalussy process.

Specifically, this means that the EU should take full account of the ex-ante consultations and impact assessments and should then act accordingly: If those initiatives have confirmed clear net benefits for the stakeholders involved a proposal should be presented. But if indications point in the other direction, it should also be possible to consider withdrawing redundant EU texts or, more likely, parts of EU texts that have become superfluous or turn out to be overly burdensome without producing positive effects.

The Commission is right in pointing to the division between ‘level 1’ and ‘level 2’ measures as a particular issue of concern in the context of the Lamfalussy process. EBIC’s view is that ‘level 1’ should always prevail in case of doubt about whether an issue should be dealt with under ‘level 1’ or under ‘level 2’, given the wider accountability of the co-decision process. In this respect, it has to be assured that the correct institutional balance is established and that the rights of the European Parliament as co-legislator are guaranteed, notably by granting a call-back right to both the Council and the Parliament.

Further, we would like to recall that level 3 is confined to interpretation and application of regulatory provisions defined at level 1 and level 2. The effect of ‘shadow regulation’, i.e. additional regulation issued at level 3, should therefore be avoided.

Concerning the question of the consultation deadlines, EBIC shares the view that some consultation periods have been too short compared to the high level of technicality involved. On the other hand, it should be noted that especially CESR and CEBS have considerably improved their consultation practice. In particular, both CESR and CEBS have increased the use of time schedules which make the consultation process much more predictable for market participants than in the past. Using such tools is very helpful for the industry to plan its forthcoming participation in the process.

EBIC has always highlighted that the quality of the legislation achieved is more important than speed. Along these lines, we welcome the fact that the consultation periods have generally become longer

¹ White Paper on Financial Services Policy 2005-2010, European Commission, December 2005

compared to what was foreseen initially, thus granting market participants sufficient time to respond. In this regard, we especially welcome the fact that the majority of CESR and CEBS consultations now last up to three months.

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

EBiC is of the opinion that the process generally allows stakeholders to put forward valuable input. In this context, EBiC is in general satisfied with the dialogues established between the industry and CESR and CEBS. Events such as roundtable discussions and panels of market participants contribute to the overall transparency of the process and provide additional opportunities for field experts to emphasise areas where in their opinion improvements are needed. In addition to panel experts, the merits of wide consultations open to all market participants and representing a balanced representation of interest needs to be considered to facilitate reaching well-balanced results. In order to make this even more transparent, we invite CESR to publish the minutes and the conclusions reached at all such meetings on a timely basis. Before final decisions are made on the basis of these conclusions, CESR could also allow for and consider public feedback on them.

We regret that CEBS has chosen to follow the recommendations of experts nominated by the Consultative Panel over the largely shared sentiments of the broad spectrum of respondents to the first consultation. While the input of the Consultative Committee's experts is useful, it is not representative of the industry as a whole. We feel that this is a dangerous precedent and is not in line with the spirit of public consultation supported by the Commission and central to the Lamfalussy process.

Such a practice undermines constructive and transparent consultation and we believe that it has had a negative impact on the outcome of CP10. Trade associations have an important role to play in this process and the need for a public hearing is made all the more important by the limited time in which to prepare a written response.

Finally, EBiC would like to reiterate its position that a real dialogue between policy makers and stakeholders should be established in order to improve mutual understanding and encourage further dialogue between policy makers and stakeholders (e.g. by 'banking practitioners') should be established in order to improve mutual understanding and encourage further dialogue. We also invite the Commission to provide feedback statements concerning the proposed 'level 2' implementing measures, especially in cases where it decided not to follow the stakeholders' recommendations.

4.2. Consultation

Generally on consultation, certain EBiC members feel that while some measures took well account of the market environment, others seemed to lack to a certain degree consideration of the views of market participants with the consequence that the measures adopted in this framework have been of varying quality. In this light, the Commission's commitment to follow a "good regulation" approach has not always been met.

We broadly believe that consultation exercises have been specific enough. To ensure that this is the case, we would suggest that consultations be increasingly carried out through all possible channels, and at all levels of the legislative process. In particular, we welcome the "four-step" approach presented by the European Commission. We would also support the drawing up of feedback statements, as suggested by the Commission. This should lead to a continuous exchange of views and information between the political and the economic sphere.

We appreciate the Commission's acknowledgement that going forward, consultations with market participants should be carried out at every occasion. We also note that the general cooperation with stakeholders has considerably improved throughout the last years. The Lamfalussy process has certainly played an important role in this development.

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).

The EBIC associations are of the opinion that a distinction should be made between the amount of consultations performed in the context of the Lamfalussy process and the level of detail featured by these consultation papers.

Concerning the first issue, some criticism has been raised by several market participants regarding the fact that the functioning of the Lamfalussy process requires too many consultations. Although this danger clearly exists and must be monitored carefully, EBIC has a more nuanced view on this question. Specifically, EBIC members believe that enhanced transparency and higher quality legislation often resulted when consultations were performed at the different levels of the process.

To illustrate this, we would reiterate our view on the importance for the European Commission to consult when preparing its 'level 2' implementing measures, even if consultations were previously performed by the bodies delivering regulatory advice, notably CESR. These consultations by the European Commission do not only enhance the transparency of the process, they also allow the industry to comment on the precise drafting proposed. As such, it is our view that this stage of consultation adds value to the legislation produced. Therefore, EBIC would suggest involving the industry at a pre-drafting stage. This would help clearly identifying problems and propose pragmatic solutions.

As mentioned above, it is crucial to organise the consultations in a way that the input of the industry can be maximised. In this context, the important improvements made recently, by spreading the consultation and by announcing them well in advance in yearly work programmes, are particularly welcome.

Concerning the second issue raised on the other hand, we are of the opinion that some of the documents produced by the Commission, CESR or CEBS were overly detailed, especially some of the "Level 3" guidelines proposed. It is vitally important to grant credit institutions a sufficient level of flexibility in the way they run their business and as such to avoid obliging them to comply with excessively detailed requirements, be these requirements defined at the European level under the Lamfalussy process or at the national level.

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

Most of the consultations performed in the areas of banking and securities have been specific, at times even proposing too detailed measures. Situations have for example been identified where proposed 'level 2' measures were in fact going beyond the requirements of 'level 1'.

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

EBiC believes that initiatives aiming at structuring a constructive dialogue with the demand side can be valuable, as end users (consumers, retail investors, issuers) are affected either directly or indirectly by the legislation adopted. We are of the opinion that the framework created by the Lamfalussy process makes it generally possible for end users to participate in the process and to make public their views.

On issues where financial products are in question and imply users of all segments of financial products, we welcome reinforced consultations. Such dialogue should only be carried out when a high degree of direct involvement is reached.

Such an approach implies clearly identifying private users. We would suggest taking into account a wide representation of the demand side, by including in that category SMEs and larger companies for instance.

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

EBiC has continuously expressed its interest in participating in such working groups and its Members have in fact already participated in several such expert groups. Our members are active players on the European financial markets and their knowledge and competence has been and will continue to prove beneficial to any such group or panel.

LEGISLATIVE PROCEDURES

We agree that one of the benchmarks to assess the success of the Lamfalussy process should be the correct and timely implementation of the rules at domestic level, convergence of practices and proper enforcement. However, all community action should respect the principles of subsidiarity and proportionality as laid down in the Treaty. While we acknowledge that Point 6 of the Protocol on the application of these two principles provides that “other things being equal, directives should be preferred to regulations”, we believe that there are valuable arguments for the use of both legislative frameworks. The choice of the legislative instrument has important implications when it comes to national implementation, it should therefore be made on a case-by-case basis.

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?

Both Directives and Regulation present specific advantages and disadvantages, and the appropriateness to use one or another should be assessed on a case-by-case basis.

It should be noted in this context that whether the introduction of the Lamfalussy process improved the application of the directives in the Member States or not remains to be seen as implementation is still ongoing. The result of this assessment will be a test case for the Lamfalussy process as highlighted in our response to question 3.

Concerning the perceived risk of “goldplating”, we concur with the Commission that legislative add-ons which are not necessary to transpose the Directive concerned must be avoided. However, we would note that goldplating might in some cases simply be an attempt by Member States to clarify EU texts. There should be a clear distinction between goldplating and granting Member States a certain flexibility when it comes to transposition so that European rules can be adjusted so as to fit with the specificities of their markets. We therefore encourage the Commission to ensure that the EU legislative text is sufficiently clear from the outset.

With a forward view, we would add that in many cases “non-action” might be the preferred option. Before starting new legislative projects it should always be scrutinised whether the issue can be resolved at Member State level, through cooperation arrangements or through the market itself.

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?

One important feature of the Lamfalussy process is that there are generally important differences between an original proposal issued by the Commission (or indeed preliminary versions of a Commission proposal) and the final text, including the implementing measures. We are of the opinion that in most cases, the amendments adopted throughout the process improve the initial text for mainly the following reasons:

- **Industry input:** it provides the EU legislator with deeper insight in and practical examples on a given subject. If taken account of, this generally leads to improvements as it ultimately facilitates implementation. Therefore, to facilitate experts' input, we would suggest involving the banking industry at a pre-drafting stage.
- **The institutional framework:** the co-decision procedure, which is the dominant process under which FSAP texts have been adopted, has clearly proven its worth over the years as the input of the European Parliament and the Council generally provide an additional layer of insight into the situation at member state level.

In conclusion, it can be stated that the amendments adopted throughout the process, being the result of consultations and of in-depth exchanges of views, generally improve the original texts proposed, for example by addressing concerns not covered initially.

As regards the use of fast track procedures, we agree that this procedure has clear advantages. In the case of underlying political agreement, it presents an effective means of achieving swift political agreement on major legislative projects. However, it has become apparent that the shortened and informal procedure makes it by and large inaccessible to stakeholders. To deliver a sufficient level of transparency we suggest that each EU institution's discussion documents be made publicly accessible before such three-way discussions take place.

FINAL OUTPUT FROM FSAP

While we welcomed the FSAP programme as a whole, we agree with the Commission's view that the need for and the scope of legislative action are not always predictable and that adaptations might therefore have to be made in the course of events. We believe that the Commission's strategy was broadly appropriate in this regard. However, we note that some of the measures of the Plan were not entirely compliant with the overarching goals.

As already pointed out in this document, it is evident that there has been a clear focus on legislative measures in the FSAP. Going forward, it is the wish of EBIC members that in view of the better regulation principles that the Commission has committed itself to, it considers taking a more balanced approach between legislative and non-legislative measures from the outset.

As regards the balance between the quantity and the quality of the measures adopted, we would broadly support the findings of the expert groups. While we continue to support the ambition of the programme at

large, the time pressure seems to have in some instances had misleading consequences as regards quality. Both industry consultation and impact assessments should indeed at all times precede legislative measures.

We find the Commission's recommendations 8 and 9 appropriate to tackle all these difficulties. We furthermore recommended the enhanced use of review clauses which would further allow an assessment of the consequences of legislative measures before new action is taken.

QUALITATIVE ASSESSMENTS OF FSAP PROCESS

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

The Lamfalussy process was designed and launched following the agreement to launch the Financial Services Action Plan (FSAP), an intense period of adoption of legislative and non-legislative acts. As such, when the first "Lamfalussy Directives" were adopted (the Market Abuse Directive, the Prospectus Directive, the Markets in Financial Instruments Directive, the Transparency Directive), very strict deadlines had to be respected, in order to meet the general timeline of the FSAP. This explains why sometimes implementing measures have had to be adopted within a short timeframe, explaining in turn that for some of the consultations performed by CESR the deadlines were very short indeed. All this has submitted all stakeholders to a heavy pressure, and has led some market participants to conclude that "quantity" has sometimes been preferred to "quality".

A similar situation has been experienced in the banking area, as the necessity to implement the Capital Requirements Directive (CRD) on time in the Member States has obliged CEBS to adopt all its 'level 3' guidelines within a relatively short period of time. This has also put considerable pressure on the industry in terms of consultation practice.

We would like to highlight here however that we believe that things have evolved in the right direction, and that increasingly the quality of legislation is being given precedence over speed of adoption. This can be explained by the fact that the pressure for adopting measures has somehow decreased, but also by the experience gained by all stakeholders involved in the Lamfalussy process. Likewise, we are confident that in the years to come, where the key objective will be to implement and enforce all the measures adopted under the FSAP, the focus will be put on the quality of the measures adopted. This view is confirmed for example by the fact that in the securities area, the attention of CESR has switched from adopting new implementing measures towards reviewing the provisions in force at the national level, a task devoted to CESR's "review panel".

Taking note of the overall speed of adoption of the FSAP under the Lamfalussy process, we highlight that the initiatives listed in the Commission's Policy programme "Financial Services Policy 2005-2010", measures should be very well targeted; and the accent should be on early industry consultation and quality of legislation, reaching a balanced level and avoiding over-regulation, rather than aiming at a hasty adoption of measures.

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

As mentioned above, EBIC is of the opinion that the measures adopted are in general more appropriate than the initial proposals made by the Commission. This can be explained both by what we regard as a positive

institutional framework and by the high degree of transparency experienced in the context of the FSAP in general and of the Lamfalussy process in particular.

TRANSPOSITION OF FSAP MEASURES

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

EBIC welcomes some of the steps taken by the Commission to encourage compliance with the EU legislation. One of the most important examples is the Lamfalussy transposition scoreboard that functions on the principle of ‘name and shame’.

EBIC would furthermore encourage the Commission to actively monitor the implementation of the FSAP measures at national level and carry out checks on a random basis. EBIC would advocate involving the Banking Industry at an early stage as regards transposition and implementation of legislation in Member States.

In order to further increase market transparency, the use of the general good clause should be further examined. Member States could be invited to report their general good provisions to the Commission, which could in turn run a proportionality test as developed by the European Court of Justice. This would create greater transparency and avoid potential misuse.

In addition, attention should in this process be given to the delivery of convergent practices. Transposition workshops and technical assistance seem the adequate tools to achieving these goals. To improve the transparency of the process, EBIC would also suggest making available to market participants the results of transposition workshops. Infringement proceedings should be pursued vigorously, and the Commission should focus on the reasons why Member States are not able to deliver the transposition in the required way and on finding collaborative solutions.

On ex-post evaluation, as announced in the Commission White Paper on Financial Services Policy, it would be essential to ensure that the entities in charge of the assessment present criteria of independence. This would be essential to trigger proper discussions when the passed legislation did not deliver expected results.