



The European Commission
DG MARKT
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DIRECTOR GENERAL

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Denmark finds that the overall aims of the FSAP have been reached.

The FSAP has created a commitment to adopt a number of necessary proposals in order to bring about an integrated competitive Single Market in financial services. We therefore find it important that the implementation of all existing financial legislation is properly monitored.

In order to prepare the Danish answer Finanstilsynet has consulted industry and users. This letter, therefore, to a large degree also reflects the answers from industry and users. That does of course not exclude individual comments from industry or users to the European Commission.

The FSAP has first of all meant a step forward in the creation of an integrated single financial market. Since cross border competition is essential in the light of obtaining economies of scale in financial services remaining barriers should be removed.

The adoption of the many directives in the FSAP has required many efforts and resources. Time now has come for digesting the impact of the directives and to concentrate work on the implementation and on supervisory convergence.

The fact that integration in the retail markets is far less advanced compared to the wholesale markets does not mean that emphasis in the coming years should be concentrated on the integration of the retail sector. Progress may be easier to achieve and the effect on the integration is far greater in the wholesale sector than in the retail sector.

The experience from the Market Abuse Directive, MIFID and the Transparency Directive indicates, however, that the timetables for the procedures at level 2 and 3 often are problematic. It has become clear that solutions on political issues must be solved at level 1 and that such issues may not be passed on to level 2.

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Attention should be focused on a particular bottle-neck namely the translation of level 1 and 2 directives. It is very important that the directives are translated and published immediately after the adoption.

The Lamfalussy process has introduced a flexible working method with several advantages. It has, however, been argued that the follow up to the action plan and the setting up of the Lamfalussy process should imply the setting up of a fourth committee – the financial conglomerates committee.

The co-operation between the 3 level 3 committees shows that a targeted cooperation may achieve impressive results with relatively few resources. It will be logical to extend this co-operation into financial conglomerates as well. Setting up a separate conglomerates committee would mean increased costs e.g. for a new organisation.

CEBS and CEIOPS have already established a joint interim working committee on financial conglomerates. The coordination may involve CESR as well. The Commission has been invited to assist in working on the key issues, such as the drafting of the mandate for the interim group. In that way the committee will be able to use the expertise of the present level 3 committees.

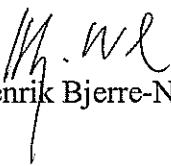
The stakeholders have pointed out that the FSAP has demonstrated that the number of directives adopted notably in the last phase of the plan has influenced the quality of the directives. This demonstrates that in the future priority must be given to a profound preparation of the draft rules and that the timetable for each draft must be flexible in order to be able to solve unforeseen problems. Notably it is important that consultations take place in such cases.

The principles in the Lamfalussy process that level 1 must deal with the important principles in the rules and that detailed rules are worked out at level 2 must constantly be borne in mind. Lacunes must be avoided and level 3 must not be called upon to remedy insufficiencies not foreseen at level 1.

Investors and consumers interest groups and organisations are usually not able to deal with many large consultations at the same time. For those groups a quick overview is especially important. It is necessary for those groups to have sufficient time for internal consultation and preparation of contributions.

It is important that the Commission always tries to avoid unnecessary administrative burdens *and we look forward to the increased use of impact assessments.*

Yours sincerely


Henrik Bjerre-Nielsen

Annex: Comments to the questions in the consultation:

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.

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.

The Lamfalussy process has meant an improvement in the preparation of the legislation at EU level notably by the involvement of the financial services industries and the users of financial services. In this way the process has facilitated an improvement in the quality of legislation in the financial sector. The process also has the positive effect that EU may react more swiftly to changes in the financial sector.

The experience from the Market Abuse Directive, MIFID and the Transparency Directive indicates however, that the timetables for the procedures at level 2 and 3 often are problematic. The problems have been for the industry to adapt to the new legislation; computer implementation issues to be solved and for the individual member states the possibility to adopt in their national parliaments the level 2 legislation within the timeframes of the level 1 directives.

In order to avoid those problems in the future more focus should be on the timeframes at the draft stage of new directives (level 1) when the directives are prepared by the Commission and notably at the late stage of the negotiations in the Council.

It is very important for the working of the Lamfalussy process that the deadlines for implementing the directives are realistic. The deadlines may only be decided when a roadmap has been drawn up for preparation of the implementation measures. The level 3 committees must be consulted in the drawing up of the roadmap.

In this context the EU institutions must take into consideration that the legislative process in different Member States strongly influences the time needed for transposition. Setting timetables that are too strict and

unrealistic is of gain for no one. Rather, this could undermine the confidence in the Lamfalussy framework.

Unrealistic time tables mean a waste of resources both within the Commission and in the Member States if a delay triggers a collective infringement procedure.

Translation of documents both at level 1 and 2 has turned into a major time consuming problem. There may be good reasons for this at the moment but the delays constitute a problem which has to be solved.

A separate problem is the publication of both the level 1 and the level 2 directives and regulations in the Official Journal. The Member States need the official version of the directives in order to finalise the national legislative procedure. Delays in the publication of the directives in the Official Journal may lead to further delays in the national parliaments.

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.

Recommendation 4: Make the maximum use of the FIN-USE forum; encourage participation from users' organisations in consultaion.

The volume of work in the start up fase of the Lamfalussy process has been considerable. Many industry organisations have described the volume as overly burdening.

It is very important that consultations are transparent and specific. Resumes of problems, questions and recommendations are absolute necessary in order to allow the stakeholders time and overview of an issue, a proposal or any document which may be presented for a consultation.

Investors and consumers are important stakeholders. The interest groups and organisations are usually not able to deal with many large consultations at the same time. For those groups a quick overview is especially important. It is necessary for those groups to have sufficient time for internal consultation and preparation of contributions.

One way to explore to involve groups and organisations in future policy developments may be to appoint representatives jointly.

Recommendation 5:***Make full use of the Lamfalussy process in providing adequate legislative responses to unexpected external events.***

Denmark supports the use of the Lamfalussy process as a remedy to deal with technical issues.

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”)**

Denmark supports the use of directives as the principle form of level 2 legislation for financial services. We find that directives at level 1 should – with only a few technical exceptions - be implemented by level 2 directives and not regulations. Our experience shows that the advantages of using regulations in the financial legislative process are minor or non-existent.

The use of regulations as implementing measures does not necessarily speed up the legislative process. Firstly, the use of regulation could prolong the negotiations because the exact wording in the regulation could be of major importance for the Member States. Secondly, although a regulation does not in itself need to be transposed into national legislation there is often a need to adjust national legislation because of the regulation. In those situations where a regulation replaces and/or substitutes existing national legislation the efforts needed to make the necessary changes often far outweighs any benefit in using a regulation. Regulations should therefore only be used when it is objectively justified, for example when the issue is limited and of a purely technical nature. A decision to use a regulation must be made on a case-by-case basis.

The preparation of the draft regulation for implementation of FATF Special recommendation no. VII illustrates the difficulties for the Member States when using a regulation. The preparation also illustrates the importance of extensive consultations on drafts for new legislation.

It must also be borne in mind that only a limited number of financial institutions rely on the EU legal texts in their work with the EU / national legislation. The overwhelming number of the financial institutions relies on the national legal texts as their only source of information.

Finally, when introducing new EU legislation it is important that requirements are proportionate to the interests at stake.

Recommendation 7:

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

Denmark agrees that fast-track procedures should normally be reserved for proposals with a strong inter-institutional backing or form part of a level 1 directive.

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.

The co-existence of initiatives mentioned in the Action Plan and new initiatives demonstrates that the Action plan has been flexible and has coped with changes in the market and illustrates that the action plan in general has worked well.

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.

In the field of regulation at EU level of financial services quality must always take priority over quantity. Experience shows that giving priority to speed and quantity shifts focus from creating an efficient market.

The introduction of the Lamfalussy process has meant additional open hearings and consultations on the proposals in the Action Plan. This process has helped in focusing both on the most important issues and on technical aspects of the proposals as well. Industry and users may early in the legislative process point to issues which may incur increased costs or administrative burdens and thereby contribute to promoting better regulation.

The experience from implementing eg. the market abuse directive demonstrate that implementation periods must be realistic. The institutions must at any moment in the legislative stage act in accordance with the principles for better regulation.

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 .

Denmark supports the finding in recommendation 10.

Recommendation 11:

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

The work of facilitating the implementation of directives should be dealt with as an integrated part of the preparation of the drafts. Applying the principles of better regulation should reduce uncertainties in the implementation stage.