



The European Commission
DG Internal market
The Green Paper on Financial Services Policy – 2005-2110
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DIRECTOR GENERAL

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*Comments from the Danish Financial Supervisory Authority to the
Green Paper on Financial Services Policy*

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KEY POLITICAL ORIENTATION

We agree with the overall objective of the Commission's statements on the financial services policy over the next 5 years and the key political orientation.

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**BETTER REGULATION, TRANSPOSITION, ENFORCEMENT
AND CONTINUOUS EVALUATION**

We support the application of a very open and transparent policy making process with extensive use of consultation mechanisms at all levels.

**MINISTRY OF ECONOMIC
AND BUSINESS AFFAIRS**

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 meant 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,
- The level of details in the level 2 legislation,
- Computer implementation issues to be solved
- 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 a late stage of the negotiations in the Council. 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.

In that context it is also important to stress that the use of regulations 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 outweigh 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 technical nature. A decision to use a regulation must be made on a case-by-case basis.

It is important that the Commission always tries to avoid unnecessary administrative burdens. Looking e.g. at the new rules at level II for MIFID we find it is a problem when proposals from the Commission inflict extra administrative burdens on the investment firms when reporting a transaction without adding value for the competent authority that receives the information. An example is the matter concerning "execution venue" where we find it important not to go further than the CESR re-recommendation.

Translation of documents both at level 1 and 2 has also 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.

CEBS, CEIOPS and CESR should also cover conglomerate issues. There is no need for a fourth level 3 committee. In stead the level 3 committees could establish a joint standing committee dealing with conglomerate issues. In that way the committee will be able to use the expertise of the present level 3 committees.

We agree that there is a need for thorough and comprehensive impact assessments made at an early stage before a proposal is put forward. In that context it is also important to analyse if there really is a need for an EU-initiative in a certain field and avoiding over-regulation. We support

the Commission Impact Assessment guidelines of 15 June and look forward to test new initiatives under the guidelines.

When presenting new initiatives is important to leave room for competition and innovation.

We find that the competition policy will be of greater importance for the financial sectors when the initiatives of the FSAP all come into effect. Potential competition and notably new actors on the market must be considered. This will create synergies in different policy areas in particularly in competition and consumer policies.

These topics should also be considered when the level 3 committees make recommendations etc.

Simplifying and consolidating financial services rules should e.g. take place in the securities area and in the insurance area. Consolidation and a future EU-rulebook could be a way to avoid overlapping of rules and at the same time give a more homogeneous EU rules in the future. The Solvency II draft directive is a good opportunity to make the consolidation of the EU-insurance directives. This should be possible without endangering the timing of the Solvency II draft directive. Furthermore Solvency II should as quickly as possible be retitled. We suggest the name "Insurance Capital Requirements Directive" because this name would link this directive further to the CRD directive in banking and will not give rise to misunderstandings. Furthermore it underlines the importance of handling similar financial products the same way from the supervisory perspective.

Finally we want to underline that future EU regulations should not undermine the important link between supervisory responsibilities and the possibility to make decisions.

ENABLING CROSS-BORDER INVESTMENT AND COMPETITION

We support the Commission initiative to identify the potential barriers for cross-border investment and competition in order to eliminate unjustified barriers.

POSSIBLE, TARGETED NEW INITIATIVES

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 year's 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.

When formulating new draft rules the Commission should concentrate on issues with a broad European dimension and with a major economic impact. It is important that work is concentrated in areas that improve the European competitiveness and promote the development of a viable and sound EU single financial market. It is also important to have a global perspective on future EU regulation.

New rules for the financial sector must allow the financial services industry to innovate and develop new financial products and to exploit the most recent technological development.. Development of risk capital markets should be an integrated part of the future process.

When considering further initiatives to integrate the retail markets consideration must be given to the balance between a realistic penetration of the national markets by companies from other member states and the costs for all companies in the markets when adjusting to new rules. Many customers have a preference for providers that are near, so they will not consider a service provider who is not located in the local market. The low volume of cross border transactions in most financial services may only increase if the customers have confidence in providers of financial services in other member states.

We support further analysis in the search for legal discrepancies which affect the promotion of cross border financial services. Priority should be given to creating transparency and comparability rather than to setting up new requirements. We also support the idea of establishing transparent forum groups for specific retail products, consisting of experts in the field, representing industry and consumer interests, to identify any barriers and examine possible solutions.

Draft directive on payment services

Initiatives in the field of retail financial services must be analysed very carefully. This is notably the case in the field of the New Legal Framework for payments.

The further analysis of the draft for a directive on payments in the internal markets raises many questions which illustrate the complexity of retail financial services. This is notably the case for the delimitation of the scope of a directive, the technical differences between different means of payments, the IT-technological aspects and aspects relating to consumer protection and civil law issues. The constant technological innovation makes it absolutely necessary to define the scope in such a manner that the technological innovations will not be adversely affected

by a directive. Well functioning national payment structures may be adversely affected if the EU rules or standards become too rigorist.

AREAS OF POSSIBLE FUTURE ACTION

We agree that the Commission should only be committed to act where European initiatives bring clear benefits to industry, markets and consumers.

Review of the Directive on deposit-guarantee schemes (94/19/EC).

A place where action from the Commission is needed is the directive on deposit-guarantee schemes. Focus should be on questions not covered by the present Directive, such as different methods for financing of deposit guarantee schemes and the division between home and host responsibility for systematically important banking operations. In order to allow for flexible solutions in the event that a bank no longer fulfils the requirements to carry out its business, it would also be useful to consider certain aspects of current EU rules on competition and state aid in connection with the utilization of the deposit guarantee schemes in crisis management.

Mortgage credit

Mortgage credit is an area where a separate Green Paper, planned for summer 2005, will address the 48 recommendations coming from the Mortgage Credit Forum Group's report. Not all recommendations do however address the fact that mortgage credit is not one product. Mortgage credit is one type of product which may be offered in more versions. Therefore a recommendation may make sense for some products and at the same time rule out another mortgage product which is appreciated by consumers, investors and industry. We assume that the differences will be reflected in possible future action in this field.

Codification and simplification

We support that the Commission looks at codification and possibly simplification of existing rules on information requirements. In a number of areas it would be possible to simplify the rules so that the information required, to a higher degree than today, reflects the needs of the customer. This also implies the possibility of applying means of digital communication, for example presenting information relevant to the customers at the internet. Besides simplification along these lines would considerably reduce the administrative burden for the companies.

Investment Funds

We look forward to the Commissions review of the UCITS legislation later this summer which we hope can serve as a platform for discussions

on whether and where there is a need for common initiatives in the investment fund legislation. Due to the fact that investment schemes in a number of countries compete with UCITS it should be considered to leave the present product regulation in the UCITS directives. Instead the rules should - like in the banking and Insurance EU regulation - regulate the companies and set the standards for the information which have to be given for all the products.

Consumer/user interests

The geographical, market and cultural differences between financial services on the national market and the services in other member states should be reduced so those barriers do not deter customers from choosing a service provider from another member state. It is important that the customers receive information which is targeted to the service and the actual situation when deciding to buy the service.

New initiatives must be based on a high level of consumer protection and must increase consumer confidence in financial services which are offered by providers of financial services in other member states. The direct access to financial services on the internet increases the need for specific, relevant and comparable information.

There are several sets of information requirements in the directives on financial services and the requirements are often overlapping. This situation makes it difficult for the providers of financial services to make sure that all requirements are complied with and for the consumers the multitude of information sources make it difficult to check whether all relevant information has been provided or not.

The Commission should continue its work on identifying non-legal barriers for cross-border transactions in financial services and address issues which influence the consumer's choice of service providers in other member states.

Finally we agree that there is a need to encourage a more active involvement from consumer organisations in forthcoming consultations.

Yours sincerely



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