



EUROPEAN COMMISSION

Internal Market and Services DG

FINANCIAL SERVICES POLICY AND FINANCIAL MARKETS

Financial services policy

Resume of Contributions to the Consultation on the draft Financial Services Action Plan Evaluation Part I – Process and Implementation

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1. GENERAL ASSESSMENT

In November 2005, the Commission asked stakeholders to comment on a draft evaluation of the process of adoption of the Financial Services Action Plan (FSAP). The draft evaluation included a number of direct questions and a series of draft recommendations for future action. This text marked the beginning of a comprehensive evaluation exercise of the FSAP. A thorough economic evaluation of the impact of the FSAP is planned for 2007-8.

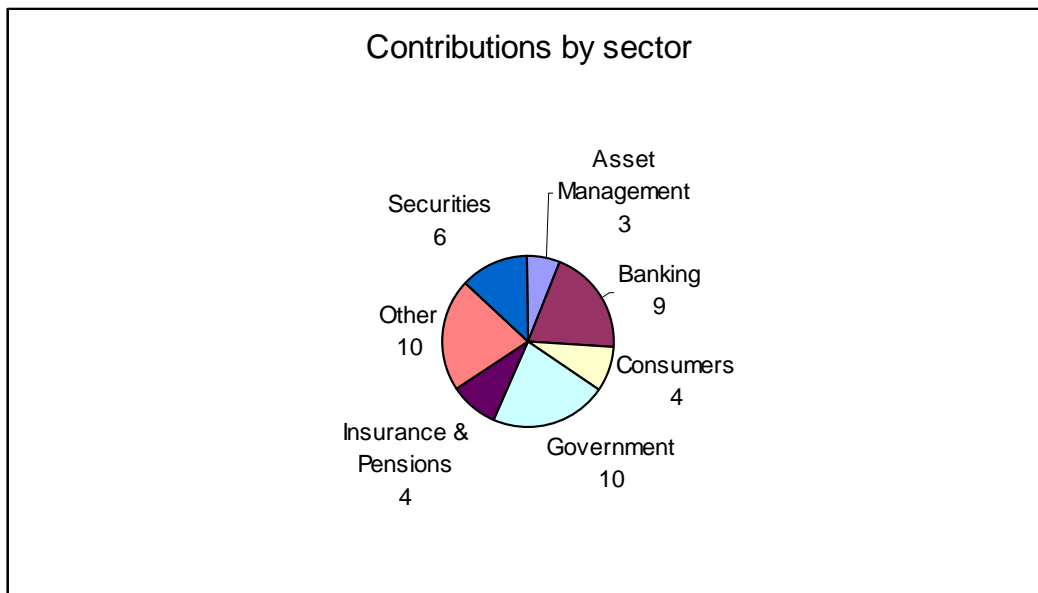
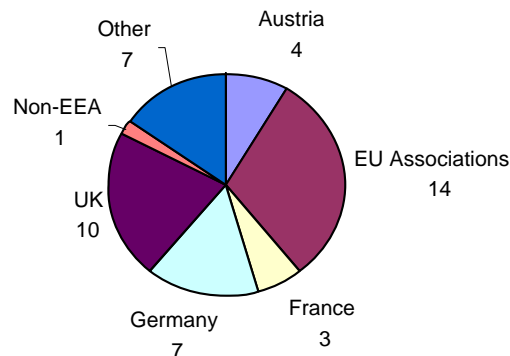
Some 46 contributions to the consultation on the first draft of the Evaluation Part I were received (see the end of this document for the list of contributors). The Commission services very much welcomed the numerous and constructive comments and suggestions of all contributors. All responses have been carefully considered and analysed.

In general, most contributors felt that it was too early to make anything but a superficial assessment of the FSAP owing to the fact that many of the initiatives contained within it had either been only recently implemented in the Member States, or remained to be transposed. However, the consensus among contributors seems to be that the FSAP has been a worthwhile exercise, with many positive elements.

The Commission is encouraged that the contributors appreciated the FSAP in general as a success, and as a major contributing factor to the creation of a truly European market for financial services and to increased European competitiveness. This has been mentioned especially against the background of the scale and complexity of this programme. The fact that the FSAP has been delivered in full and on time was honoured by almost all contributions. Furthermore the Lamfalussy process as a major part in this success is highly valued. In general, the contributors therefore strongly endorsed a high number of the recommendations proposed in the first draft report, published in November 2005. Those areas where the recommendations received sufficient comment to warrant amendment, are indicated in "track changes" mode, below.

Since the publication of the initial draft of the FSAP Part I evaluation, the Commission has published its White Paper on Financial Services 2005-2010 ("White Paper"), which addresses many of the issues raised in the feedback to this consultation. The issue of "better regulation" came strongly to the fore in the contributions. For instance, many contributors lauded the increased use of consultation in the course of the FSAP, insisted that all new actions should be preceded by detailed impact assessments (with some contributors insisting on specific cost/benefit analyses), argued that coherence between different policy instruments should be ensured and insisted on even and timely implementation and enforcement of Community legislation. Each of these issues has been addressed in the White Paper. In addition, numerous respondents address the issue of the consultation of consumers and users. In general, their feedback supports greater inclusion of consumers and users in policy making, although some, particularly in the securities industry, argue that "consumers" of securities legislation are often not retail clients, and that it may therefore be more appropriate to seek the input of other stakeholders.

Contributions by country of origin



2. FEEDBACK OF THE CONTRIBUTIONS

2.1. ANALYSIS OF THE STRUCTURE OF THE FSAP

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~~ all stakeholders, including market participants and users. Strong monitoring mechanisms are required.

The majority of the respondents concurred with this recommendation, with the additional point made by some consumer contributors that not only should the Council, Parliament and industry have given their endorsement to a policy programme, but also the consumers and users concerned. The issue of planning and prioritisation was picked up by a large number of contributors, who remarked that correct prioritisation is key to avoid inconsistencies and incoherent timeframes between policy initiatives.

In this section of the evaluation, the Commission asked what respondents' personal experiences had been of the implementation process, and whether they considered any of the measures introduced under the FSAP as redundant or ineffective. Although the vast majority commented that it was too early to comment on the latter question given the fact that most measures were in the early stages of implementation or were yet to be implemented, some specific issues were highlighted. It is impossible to document all of these in a text of a general nature, but the Commission will ensure that they are taken into account, particularly in the reviews of individual measures that will be carried out in the coming years, and also in the economic evaluation of the FSAP to be undertaken in 2007-2008.

In response to the request to rank the 3 most important elements of the process involved in adopting the FSAP programme, the respondents put forward a variety of elements that they deemed to have made a significant contribution. Consultation and transparency was the element selected by the overwhelming majority of respondents as having clearly contributed to the success of the programme. Others included

- close co-operation and coordination between the relevant (legislative) bodies and between the European institutions and market participants;
- widespread market participant support and economic demand for a more integrated financial services market;
- the introduction of more flexible policy-making through the Lamfalussy approach;
- prior political backing (and close link with the Lisbon strategy);
- the conducting of ex-ante impact assessment to ensure that measures were justified ("sticking to the essentials"), and the regular monitoring of progress; and
- engagement with "better regulation" in general, including granting importance to implementation and enforcement.

Building on the above, a number of respondents made remarks on some key principles to be taken into consideration when making future policy programmes. These included having a clear, widely supported vision for what the single market should look like, devoting more resources at the planning and prioritisation stage of producing any policy initiative, striking the right balance between competition and harmonisation, paying greater attention to self-regulatory initiatives while maintaining strong consumer protection, ensuring that local realities are not ignored when developing EU-wide legislation, paying particular attention to the impact of policies on SMEs and embedding the global dimension in future policy making.

2.1.1. Action Plan framework

The Commission asked if respondents agreed 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. Most responses that answered this question confirmed that the fact that the FSAP was adopted as a single package gave it political visibility and significance, and helped to create momentum in general financial markets reform. However, many contributors highlighted other elements that shored up this political backing, namely many of the elements mentioned in the report under "Influences on the timing of adoption of measures", below.

Some respondents used the opportunity to comment on the Action Plan as a framework to mention the "regulatory fatigue" that some have experienced further to the adoption of the FSAP. The Capital Requirements Directive, Markets in Financial Instruments Directive and the introduction of International Financial Reporting Standards in particular were picked out as having represented a significant usage of resources, both by regulators and market participants. This tied in with the contributions received in the preparation of the White Paper on Financial Services Policy 2005-2010. This document, which sets out the Commission's objectives for the coming years, underlines the importance of consolidating the previous achievements of the FSAP.

2.1.2. Priority Setting and Timeframes

Almost all respondents to the consultation stated that when designing an over-arching action plan on a given subject, advance project planning and priority setting is crucial in order to ensure coherence in achieving the overall aim, optimise the interactions between initiatives in complementary sectors, and avoid bottlenecks. Many called for the early involvement of stakeholders in setting the priorities. Several commentators mentioned the fact that work on two major pieces of legislation, the Capital Requirements Directive and the Markets in Financial Instruments Directive, commenced only relatively late in the FSAP process, with ensuing tight deadlines for adoption.

Some contributors (primarily national authorities) suggested that in the planning phase, greater consideration should be given to the option of not introducing specific measures, and to finding non-legislative solutions. Others argued that timetables for preparation, adoption and implementation of actions should be set more "realistically". One specific bottleneck identified by respondents was delays in the translation of legislative measures into the community languages.

Despite a general call for more concerted efforts to be put in to the planning phase of an action plan, some contributors suggested that timetables for draft measures must be flexible in order to resolve unforeseen difficulties, and that consultation should be carried out in this event. Although as yet untested, this is the intention of the Lamfalussy approach to policy making.

2.2. INFLUENCES ON THE TIMING OF ADOPTION OF MEASURES

Contributors to this consultation mentioned a wide variety of influences on the timing of the adoption of the FSAP measures, both as a whole, and individually. The Action Plan as a whole was perceived to benefit from its close link with the Lisbon strategy, and also from the impetus to integrate financial markets that came from the launch of the euro in 1999. Other catalysts put forward included the end of the European Parliament legislature, the disciplined respect of timing in the adoption of individual measures, and the overhaul of the way in which financial services legislation is produced, namely the Lamfalussy approach to policy-making.

2.2.1. Lamfalussy

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.

This recommendation was broadly supported by the contributors to the consultation, with only two negative voices being raised on this recommendation – one from a corporation that suggested abandoning the Lamfalussy process altogether, and one from a national authority that believed that the Lamfalussy process made the legislative procedure more inflexible and more unpredictable than before. However, these are minority voices. The vast majority of the respondents welcomed (albeit sometimes guardedly) the Lamfalussy model as improving the process of financial policy making, "enhancing appreciation of respective concerns and facilitating acceptance of the legislative outcome". A number of contributors expressed regret that this approach had not been introduced at the beginning of the FSAP and consequently not applied to some key legislation such as the Prospectus Directive and the UCITS directives. However, there were a number of key issues that emerged time and again in the consultation.

Firstly, there were many comments that it is too early to weigh up the costs versus the benefits of the introduction of the Lamfalussy structure, and to estimate its impact in making it possible to be more flexible in creating legislation to suit the ever-changing markets. The reasons given for this was that the flexibility of Level 2 of the 4-level structure had not yet been tested, i.e. there has not yet been a situation whereby the Level 2 implementing measures of a given directive have needed to be adapted in response to changing markets, therefore the flexibility built into the system to accommodate this has not yet been put to the test.

Many contributors commented on the necessity to clearly distinguish between Level 1 and Level 2, to give sufficient time to elaborate and adopt Level 1 before negotiating Level 2 and to avoid excessive detail at both levels. A large financial industry federation argued that when Level 2 rules are closely connected with civil law rules, that a principles-based approach should be used. The necessity to establish criteria on the right legislative instrument on the right Lamfalussy level was also raised.

Another frequent comment was that the deadlines for the adoption of the Level 1 and Level 2 measures were excessively short, with detrimental effects on consultation and consensus-building. Furthermore, many respondents mentioned the volume of consultation that arose as a result of the introduction of the Lamfalussy process, which was perceived by some market participants and user groups as being excessively high, with many issues being consulted on at the same time and posing a significant challenge to the available resources. The issue of consultation is addressed more comprehensively in section 2.2.2, below.

With regard to Level 3 of the Lamfalussy process, numerous contributors remarked that it will be necessary to ensure that Level 3 does not entail any additional regulation, but merely interpretation and application of the provisions of Levels 1 and 2.

The most commonly submitted comment on Level 3 was on the role(s) played by the committees themselves. Many contributors felt that owing to the demands of workload in delivering advice on Level 2 proposals, the Level 3 committees have not had time to enhance the supervisory cooperation necessary to improve implementation and ensure consistent and equivalent transposition of legislation. Some called for greater resources to be devoted to this element in the Lamfalussy structure.

A significant number of contributors expressed the opinion that greater transparency on the part of Level 3 committees is desirable, for instance with regard to their working methods and the outcome of committee and working group sessions. Feedback was also seen as desirable when a Commission Level 2 proposal differs significantly from the advice given by the Level 3 committee, with the request being for the Commission to provide an explanation of where and why it has departed from the Committee's advice.

There was little mention of Level 4 in the feedback to the consultation, presumably owing to the fact that at the time of submission, the Lamfalussy directives had only recently been adopted or were yet to be adopted. However, where it is mentioned, the Commission is urged to dedicate greater resources to enforcement in order to be able to take vigorous action to enforce Community law.

2.2.2. Consultation

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 consultation.~~ Take steps to encourage the participation of the appropriate consumers and users of financial services in consultation.

All of the respondents to this consultation welcomed broad transparency in policy making and the consideration given to consultation of stakeholders in the adoption of the FSAP. Many commented that consultation had improved over the course of the 5 years of the Action Plan. The most frequent negative comment on consultation was that consultation periods were too short, especially given the length and level of detail in the consultation documents. This was deemed to be especially true of consultation from the Level 3 committees on their advice to the Commission on Level 2 measures. Several respondents expressed support for publishing work programmes well in advance in order to allow stakeholders to prepare for upcoming consultations and for co-ordinating better the timing of consultations by the Commission and those by the Level 3 committees. This would ease the problem of multiple resource-intensive consultation exercises being undertaken concurrently.

The desirability of feedback statements was highlighted by a large number of contributors, who saw feedback statements as an essential element in communication between the European institutions and supervisory committees and those who had provided input. However, a number of these contributors warned against "cherry picking" responses to consultations in the feedback statements in order to highlight the most supportive responses and called for full transparency in consultations, i.e. publishing all responses directly on the website of the institution concerned. Some contributors also called for an explanation to be given in the feedback statement of why some contributions to consultations have been taken into account in the final drafting and others disregarded.

Almost all of the respondents who responded the question on whether consultations had been specific enough answered in the positive. Several of them went on to plead for a continuation of consultation exercises at all stages in the preparation of a policy initiative, including at the pre-drafting stage. One respondent argued for greater attention in consultations to be given to out-of-court redress and ombudsman schemes.

On content, several contributors mentioned that where significant changes are brought to a policy proposal in the later stages of negotiation, and these changes had not been included in the pre-legislative impact assessment, then these changes should be, if not subjected to impact assessment themselves, at least communicated openly to stakeholders and time given for assessment and comment. If possible, the Commission should include a range of possible options in its pre-legislative impact assessments so that their relative benefits can be weighed up.

Another frequently raised comment on consultation exercises was the use of the English language. A number of contributors expressed the view that by publishing consultation documents only in English, the institutions and committees are putting an obstacle in the path of representatives of industry, but especially consumer and users who may not be proficient in English. Two national industry associations called for consultation documents to be produced in at least the three Community working languages (English, French and German). Other contributors added the request for contributions in other community languages to be accepted, even if the consultation document is published in English. These respondents argued that even if translating consultation documents or responses into other languages were to slow down the elaboration of legislation, this would be compensated by the higher quality of the final text that would result from the additional expert input received.

Most respondents expressed support for the greater inclusion of users of financial services in consultations and expert groups. Some urged for clarification of who the "users" of particular financial services or products are, in order to ensure the greatest added value is obtained. For instance, a small number of industry associations mentioned that for certain measures such as securities markets and company law legislation, the users of such legislation are not represented by consumers, but rather by issuers, investors or wholesale clients. Others called for greater attention to be given to bringing together both the supply and demand sides of financial services markets, in order to generate a targeted dialogue. The Mortgage Credit Forum Group was mentioned as a good example here. It was mentioned that in this context, the "demand side" should include SMEs and larger corporates. One national authority expressed the view that when responding to consultations, national regulators should act in the interests of consumers.

Most respondents who commented on this issue were in favour of encouraging greater input from consumer representatives in policy making and several made recommendations on how this could be achieved, such as producing short executive summaries of consultation documents which would be more accessible to consumer and retail investor interest groups, hosting consultative meetings away from Brussels to facilitate less-resourced groupings, and applying consumer-testing models when proposals have been developed. Other suggestions made on this issue, such as broadening the base of consumer representatives with expertise on financial services issues, are being addressed in the measures announced in the White Paper on Financial Services Policy (2005-2010).

This broader approach to the inclusion of consumers and users in policy making has been reflected in the wording of the recommendation in the report: *Take steps to encourage the participation of the appropriate consumers and users of financial services in consultation.*

All contributors who responded to the question on their willingness to make themselves available for involvement in forum groups/ working parties/ advisory panels on future policy developments answered positively.

2.2.3. Responses to external events

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

Most of the respondents to this recommendation agree with the underlying principle of exploiting the flexibility offered by the Lamfalussy process to adapt legislation where necessary. However, almost all warn against over-reacting to specific market events. Many highlight the fact that major financial scandals have been caused by market participants not adhering to existing laws, and that therefore greater efforts should go to ensuring compliance with the existing framework, rather than to devising additional legislation.

Several respondents mention the need to continue the practice of consultation and full transparency, even when adapting legislation in the wake of unexpected external events, and only to propose additional legislation if there is a clear public interest case.

Furthermore, one large industry association mentioned the need to bear in mind the global aspect of financial services legislation when responding to external events, including the need to ensure that new legislation does not contradict international conventions or codes of conduct drawn up by global industry bodies, and to ensure that any new initiatives will not be damaging to Europe's competitiveness in a global market.

2.3. LEGISLATIVE PROCEDURES

2.3.1. Choice of legislative instrument

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”).~~ Assess the appropriate use of regulation or directive on a case-by-case basis.

The issue of which legislative instrument to use drew very diverse responses, with the general consensus being that the decision on whether to use regulations or directives should be on a case-by-case basis, with regulations only being used in specific cases where the material is of a technical nature or where the scope is clearly limited. However, responses varied from those who strongly endorsed the use of regulations as a means to ensure that each Member State's application of the legislation was identical, to the opposite end of the spectrum, with one national authority calling for directives to be the only instrument used. Several submissions added that the choice of legislative instrument should come only after a consideration of possible non-legislative measures such as self-regulatory codes of conduct, recommendations or best practice.

The suggestion in the draft report that the use of regulations can guard against goldplating was refuted by a number of respondents, who suggested that Member States may simply introduce additional legislation independently. Furthermore, others stated that the Commission should not underestimate the impact that the use of regulations can have on Member States' necessity to adapt existing legislation, even in other areas. Several industry associations raised the point that the efficient working of Level 3 of the Lamfalussy process should avoid goldplating.

With regard to the selection of instrument to use at level 2, some national authorities argued that the use of directives makes it easier to agree measures, because they give Member States some flexibility in the implementation into national law, allowing the markets where there is little cross-border activity to be taken into account. The argument was also raised that, with the close involvement of finance ministries and supervisors that has been built in to the Lamfalussy process, the Member States should have greater "buy-in" to the legislation being adopted, regardless of the instrument.

In accordance to the feedback given by the contributors, the recommendation in the report now reflects a more open approach.

2.3.2. Amendments made in European Parliament and Council

Recommendation 7: Limit the use of the "fast track" procedure to those proposals with strong prior inter-institutional backing.

Contributors who commented on this point and who replied to the questions on the amendments brought by the European Parliament and Council to Commission proposals were generally supportive. Industry representatives, perhaps unsurprisingly, were most vocal in their support for the Council and (particularly) the European Parliament's contribution to the legislative process, expressing the view that their amendments have usually led to significant improvements, as they have addressed concerns not dealt with initially in the Commission's proposals.

Several contributors, including consumer representatives, commented that the use of the fast-track procedure leads to reduced transparency, and so were not in favour. Some suggested that discussion documents should be made publicly accessible before three-way discussions between the Commission, European Parliament and Council are held.

Support for the European Parliament was also evident in a number of contributors calling for institutional balance and expressing support for the EP's rights under the comitology arrangements.

2.4. FINAL OUTPUT FROM FSAP COMPARED TO INITIALLY DRAWN UP ACTION PLAN

Recommendation 8: Take into account the necessity to review and adapt existing measures after their adoption and avail of the possibilities offered by the Lamfalussy process.

The contributors mentioned in general that the Commission's strategy was broadly appropriate in this regard given that some of the measures planned in the FSAP adapted over time. It was stressed that the need for and the scope of legislative action are not always predictable and adaptation might therefore have to be made in the course of events. The view was expressed that the European Commission should not hesitate, after consultation with market practitioners, to repeal or modify measures that are not working.

2.5. QUALITATIVE ASSESSMENT OF THE FSAP PROCESS

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.

The Commission asked the contributors to assess the balance reached between the quantity and quality of the measures adopted. Although it was frequently mentioned that it is too early to give a definite judgement due to the fact that it remains difficult to judge the quality of the legislations before their implementation, nearly all contributors highlighted, as a matter of principle, that the quality of a prospective piece of legislation should always take precedence over the speed. Only targeted and cost-efficient regulation can foster the innovativeness of markets and ensure a level playing field for financial services providers, not only to avoid the danger of knee-jerk legislative reaction.

The majority of the respondents considered that the quality of the measures adopted is globally satisfactory, especially taking into consideration the short timeframes involved. However, in order to avoid problems at and after the implementation stage, some contributors advocated that quantity should be reduced in order to achieve better regulation. Emphasising the importance of realistic deadlines, a few respondents remarked in this context that timetables imposed were in some cases much too tight to produce best quality results. On the other hand, other respondents stressed that dynamism and momentum should be maintained.

In the draft report, the Commission services asked for an assessment of the appropriateness of the adopted measures compared to the initial proposals. The majority of the respondents highlighted the considerable difference between the initial proposals and the measures finally adopted. Some contributors reported mixed experiences. A number of contributions criticised what they viewed as inappropriately detailed and prescriptive FSAP measures. Given the inevitable consequences of market developments, some respondents expressed the view that a discrepancy between the adopted measures and the initial proposals was unavoidable.

2.6. SECTOR FOCUS/ ALLOCATION OF RESOURCES

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.

This recommendation is a distillation of the strategy communicated in the Commission's White Paper on Financial Services Policy 2005-2010. All contributors who commented on this recommendation agreed with its general direction. Some of the respondents highlighted a difficulty in detecting trends in the sector-focus due to the fact that many FSAP measures intended for one part of the financial sector cross have implications for others. Furthermore, it was commented again that it was premature to discuss or consider introducing legislation for those areas that have perhaps seen less legislative progress e.g. retail financial services, until the FSAP is completed and implemented in all Member States. Against this background, most of the respondents confined themselves to giving general remarks.

Many stressed that the Commission should ensure that it allocates its resources and structure its operations in such a way that impact assessments and post-implementation reviews are carried out effectively and objectively, and that staff resources within the Commission Services should be reallocated towards implementation and enforcement of agreed measures.

As a specific remark, some contributors directed attention to their perception that the FSAP presupposes that all firms wish to operate on a cross-border basis although there are many firms which do not wish to operate in any market but their own home market. They viewed the FSAP as representing high costs for few benefits for these firms.

2.7. TRANSPOSITION OF FSAP MEASURES

Recommendation 11: Continue and extend the practice of offering transposition workshops and technical assistance to Member States in order to facilitate transposition.

Most respondents appreciated in general the Commission's efforts under way and encouraged a more proactive approach to strengthening the coordinating of the transposition and implementation process. The overwhelming majority therefore fully supported this recommendation.

The participation of the European Commission during the process of the implementation of EU directives into national law was considered as very helpful to assist the implementation process and to clarify potential open issues that may arise. Some contributors stressed that improvement in this field could be achieved by using a general indications as to who should be responsible for what and therefore supported the introduction of national single contact points to monitor and report back to the Commission on Member States' progress in implementing EU financial services legislation into national law.

A few respondents indicated that transposition workshops are only useful if the Commission itself has a clear position on the correct interpretation of the provisions of a given Directive. In the context of transposition workshops and technical assistance to Member States, some called for industry and financial sector employees to be involved. It was highlighted that these groups are best placed both to give their assessment of what may or may not work and to show up potential inconsistencies between national transpositions or lack of implementation of EU legislation. One tool suggested as being appropriate is CESR's proposed "mediation mechanism" aiming at resolving conflicts that may arise among securities regulators.

The Commission services asked if respondents could recommend any further practical steps that could encourage greater compliance with the requirement to transpose and implement legislation in the Member States. In addition to using this invitation to recapitulate on issues raised above such as ensuring realistic transposition deadlines, the contributors offered a broad range of practical steps. It would go beyond the scope of this general report to document every single proposal, but, again, the Commission will ensure that they are taken into account.

In general, most of the respondents advocated closer monitoring and public disclosure of Member States' transposition efforts by the Commission. In the interests of fair and consistent implementation of the FSAP, many contributors stressed that it would be necessary to establish an appropriate system to ensure and "monitor" that EU law is correctly implemented

at a national level. Some contributors mentioned in this context that the Commission therefore must show the ability to act if Member States fail to implement or to comply with the legislation. This would require the existence of or the threat of sanctions which refers to the untested "level 4" of the Lamfalussy process, which is seen as a vital and integral part of the process. The usefulness of giving greater attention to the issue of out-of-court redress was also mentioned. It was mentioned that these systems are not established in all Member States, and even where they do exist, consumers are sometimes not aware of them.

A significant number of contributors remarked that more of the Commission's resource should be devoted to the implementation and enforcement of FSAP. Among others, this would help the Commission services to understand the reasons behind the late transposition of many directives.

Several respondents noted that it is important to provide additional incentives to Member States for timely and accurate transposition such as "naming and faming" the best performers. Inversely, some contributors stressed that the regular publication of FSAP Transposition tables is one of the most important tools in encouraging greater compliance, despite the fact that the tables do not reflect the quality of national transposition. In order to bridge this gap, increased scrutiny of national implementation by the Level 3 committees and peer group reviews are suggested as useful ways to help raise standards of implementation in many contexts.

In addition, one contribution suggested that the Commission should seek to secure the agreement of as many parties as possible interested in regulatory and supervisory matters in the EU to joint statement such as a "Statement of Principles and the Commitment to a Vision of the Single EU Financial Market" in which the subscribers commit themselves to a common vision of the EU Single Financial Market and to taking all action necessary to eliminate all barriers and obstacles to this achievement. Such agreement would, according to the contribution, help to avoid delays in transposition owing to a higher level of "buy in".

The desirability of a special system to ensure that complaints on wrongful application of EU law, by which industry participants would have a means of alerting the Commission and regulators about transgressions of EU rules, was highlighted by some contributors. Finally, it was mentioned that post-implementation reviews by a specialised team should become an embedded aspect of implementing any EU legislations to ensure that the Commission is achieving its objectives.

2.8. GOING FORWARD

Comments from the contributors on moving forward after the completion of the FSAP largely mirrored those expressed in the extensive consultation that preceded the preparation of the White Paper in Financial Services Policy (2005-2010). Here, the main themes are better regulation, including allowing for the possibility of simplification of existing legislation, consultation and greater impact assessment.

Numerous contributors commented that "non-action" might in many case be the preferred option which directly reflects to the call for a "legislative and regulatory pause" and the wish for a more balanced approach between legislative and non-legislative measures. It was often mentioned that before starting new legislative projects it should always, as a matter of

principle, be asked to what extent market solutions can be encouraged or alternatively whether the issue can be resolved at Member State level or through cooperation arrangements. In that context, some contributors remarked that the effectiveness of non-binding common standards could be optimised; the implementation of these standards should be subject to the “comply or explain” principle, i.e. a lack of implementation of such standards by any jurisdiction needs to be explained

With regard to consultation, many contributors expressed the need to reinforce the consultation process at all stages by a more systematic integration of the end users including issuers and the approach between legislation and non-legislative measures from the outset. Evaluation of those measures that have drawn greater industry comment should be prioritised. The accent should be on early consultation and quality of legislation.

The third point concerning going forward is the need of thorough impact assessment, including cost-benefit-analysis. Many contributors stressed that it is extremely important when developing new measures to undertake analysis to ascertain whether there is a market failure based on clear evidence to be addressed. Furthermore, the desirability of an ex-ante impact assessment, which would stimulate greater coherence between measures, was highlighted by some contributors.

3. CONCLUSIONS AND NEXT STEPS

In the future, the European Commission will be strengthening its efforts to closer monitoring of and public disclosure on Member States' transposition efforts. This is the expression of the European Commissions' firm conviction that regulation alone does not deliver an integrated Single Market and that the success of FSAP as a whole programme depends on the consistent and timely implementation of the FSAP measures at Member State level, convergence of national supervisory practices and rigorous enforcement. The great support of the contributors concerning this matter encourages the Commission in this important area.

Going forward, the medium-term objectives of the Commission's policy for the EU financial sector are listed in the White Paper on Financial Services (2005-2010). With dynamic consolidation as a leitmotiv, the European Commission is aiming to provide the regulatory framework for an integrated, open, inclusive, competitive, and economically efficient EU financial market. In order to reach this aim the Commission will deploy the most open, transparent, evidence-based policymaking based on a dual commitment to open consultation and impact assessments, so to ensure sound rules are drawn up, adding value to the EU's financial services sector and consumers.

4. LIST OF RESPONDENTS

Consultation on the draft FSAP evaluation – Part I

| | | |
|-----------|---|--|
| <i>IP</i> | = | <i>Insurance and Pensions sectors</i> |
| <i>B</i> | = | <i>Banking sector</i> |
| <i>S</i> | = | <i>Securities sector</i> |
| <i>AM</i> | = | <i>Asset Management sector</i> |
| <i>C</i> | = | <i>Users and consumers of financial services</i> |
| <i>G</i> | = | <i>Governments and supervisory authorities</i> |
| <i>O</i> | = | <i>Other</i> |

ABI Association of British Insurers (IP-UK)
AFG Association Française de la Gestion Financière (AM-FR)
AmCham American Chamber of Commerce to the EU (O-US)
AMF Autorité des Marchés Financiers (G-F)
APCIMS Association of Private Clients Investment Managers and Stockbrokers (AM-EU)
Austrian Ministry of Finance (G-AT)
Austrian National Bank (G-AT)
Barclays plc (B-UK)
BBA British Bankers' Association (B-UK)
BEUC The European Consumers' Organisation (C-EU)
BIPAR European Federation of Insurance Intermediaries (IP-EU)
Bundesverband der deutschen Industrie (O-DE)
BVI Bundesverband Investment und Asset Management e.V. (AM-DE)
CEA Comité Européen des Assurances (IP-EU)
City of London (O-UK)
Czech Republic Ministry of Finance, National Bank and Securities Commission (G-CZ)
Danish Shareholders Association (C-DK)
Deutsche Bank (B-DE)
DFSA Danish Financial Supervisory Authority (G-DK)
EACB European Association of Co-operative Banks (B-EU)
EALIC European Association for Listed Companies (S-EU)
EBIC European Banking Industry Committee (B-EU)
Energy Commodity Traders Group (O-DE)
Euronext (S-NL)
Europlace Paris (O-FR)
Euroshareholders (C-EU)
ESBG European Savings Bank Group (B-EU)
FBE European Banking Federation (B-EU)
FEE European Federation of Accountants (O-EU)
FESE Federation of European Securities Exchanges (S-EU)
Finnish Government Ministry of Finance (G-FI)
Finnish National Bank, Financial Markets & Statistics Division (G-FI)
Gruppo Borsa Italiana (S-IT)
ILAG Investment and Life Assurance Group (IP-UK)
Initiative Finanzstandort Deutschland (O-DE)
Law Society of England and Wales (MI-UK)
London Investment Banking Association + 10 securities dealers associations (S-EU)
London Stock Exchange (S-UK)
Norwegian Ministry of Finance (G-NO)
Österreichischen Sparkassenverband (B-AT)
Thyssen Krupp (O-DE)
UK Financial Ombudsman Service (G-UK)
UK Treasury (G-UK)
UNI-Europa Finance (C-EU)
WKO Austrian Federal Economic Chamber, financial fiscal and trade policy dept (O-AT)
Zentraler Kreditausschuss (B-DE)