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EUROPEAN COMMISSION
Internal Market and Services DG

Working paper

Annex III to the

**White Paper on
Financial Services Policy (2005 – 2010)**

**RESUME OF CONTRIBUTIONS RECEIVED FROM MARKET PARTICIPANTS ON
THE GREEN PAPER ON FINANCIAL SERVICES POLICY (2005 – 2010)**

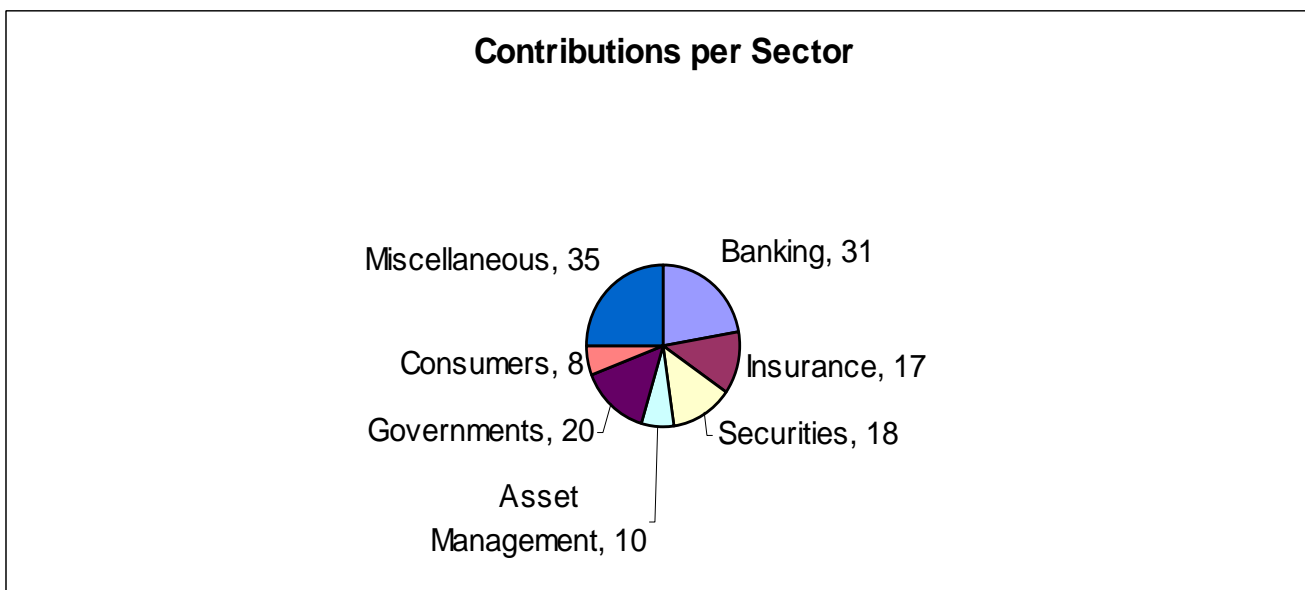
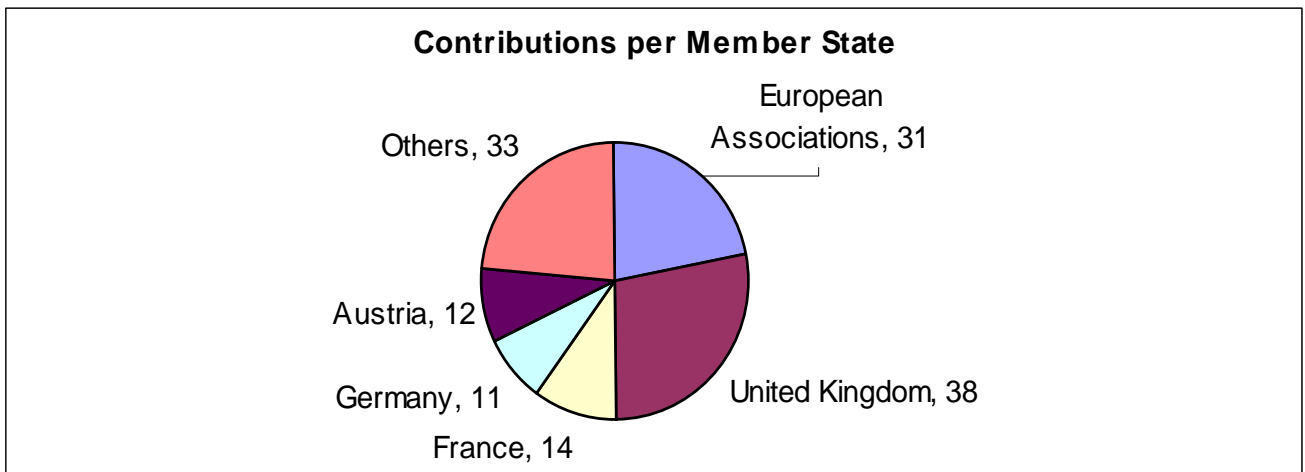
TABLE OF CONTENTS

1.	GENERAL ASSESSMENT	3
2.	BETTER REGULATION	5
2.1.	Open and transparent consultation	5
2.2.	Impact Assessments	6
2.3.	Implementation and enforcement.....	6
2.4.	<i>Ex-post</i> evaluation	7
2.5.	Simplification, codification and clarification	8
2.6.	Users of financial services: input, education and redress	10
2.7.	Further reinforcing the interaction with other policy areas.....	11
3.	ENSURING THE RIGHT EU REGULATORY AND SUPERVISORY STRUCTURES	13
3.1.	Making the Lamfalussy process work	13
3.2.	Supervisory challenges.....	13
4.	ONGOING AND FUTURE LEGISLATIVE ACTIVITIES (2005-2010).....	19
4.1.	Ongoing projects.....	19
4.2.	Reflections underway.....	19
4.3.	Areas in which no legislation is planned at this stage	22
4.4.	Future initiatives.....	23
5.	THE EXTERNAL DIMENSION.....	27
	LIST OF RESPONDENTS.....	28

RESUME OF CONTRIBUTIONS RECEIVED FROM MARKET PARTICIPANTS ON THE COMMISSION'S GREEN PAPER ON FINANCIAL SERVICES (2005-2010)

1. GENERAL ASSESSMENT

The Commission asked stakeholders whether they agreed with the overall objectives for the Commission's policy over the next 5 years as outlined in the Green Paper on Financial Services (2005-2010), which was published on 3 May 2005¹. Around 150 contributions were received (see page 28 and further for an overview of the 139 contributions which were published on the Commission's website).



¹ See: http://europa.eu.int/comm/internal_market/finances/docs/actionplan/index/green_en.pdf

The Green Paper was generally perceived as a balanced document. It already took into account many convergent opinions expressed during the 18 months consultation exercise prior to its publication, including the work of four expert groups, which reports had undergone wide public consultation already². The preparation of this new financial services strategy for the Commission was applauded as an example of good policy preparation; other services of the Commission and national governments were invited to follow equivalent procedures and approaches.

The following key priorities as outlined in the Green Paper could count on full support:

- The Commission's approach to better regulation, consultation policy, evidence-based policy-making and its commitment to impact assessments swiftly following the first discussions in this area;
- The Commission's assistance provided to Member States on implementation and enforcement;
- The clear warning that 'goldplating' at Member State level must be avoided³;
- The standard ex-post evaluation of all legislation initiated at EU level;
- Efforts to include users/consumers more directly in financial services policy making;
- The announcement to further reinforce the interaction with other policy areas;
- The promotion of global competitiveness and the role of competition policy;
- The emphasis on strengthening the external dimension.

Furthermore, the suggestion to prioritise the completion of 'leftovers' from the Financial Services Action Plan (Solvency II, Payments, Capital requirements and possibly Clearing & Settlement) was fully supported. The same was true for the suggested areas where the Commission may decide not to make a proposal (rating agencies, financial analysts and implementing rules referred to in the Takeover Bids Directive).

In the meantime, the Green Paper has been endorsed by the Council on 11 October 2005. The final content of the White Paper is in line with the Council Conclusions drawn. Furthermore, it coincides with the priorities indicated in Parliaments' Van den Burg report on Financial Integration⁴ and the Draft Opinion of the EU Economic and Social Committee⁵. This broad support by the Institutions and all stakeholders on the way forward was confirmed during the Exchange of Views organised by the Commission on 18 July 2005⁶.

Therefore, the Commission decided that the policy lines in the White Paper should not deviate significantly from the analysis in the Green Paper. Coherence between all consecutive steps in the 2-year consultation exercise is a clear sign that the collective bottom-up approach is working effectively. There is no support for new initiatives beyond those indicated in the Green Paper; nor is there support for doing less.

2 See: http://europa.eu.int/comm/internal_market/finances/policy/index_en.htm

3 A few respondents pointed at the fact that if minimum harmonisation is applied or Community law is not clear, MS are forced to 'goldplate', to be able to fill in possible gaps or to provide necessary guidance to industry. Therefore, MS are not always the ones to blame.

4 See: http://www.europarl.eu.int/meetdocs/2004_2009/documents/PR/553/553131/5531en.pdf

5 Expected to be adopted on 14.12.05

6 See: http://europa.eu.int/comm/internal_market/finances/docs/actionplan/infosessions/results_en.pdf

2. BETTER REGULATION

With the completion of the Financial Services Action Plan (FSAP), the legislation framework has largely been put in place. The Green Paper suggested that the focus should now turn to identifying the remaining legal gaps and barriers for an integrated financial services market to function. The "better regulation" approach would be crucial in this regard; enabling the Commission to make the right policy choices in an open and transparent way. As part of this approach, the overall priority should also be the convergent implementation and vigorous and effective enforcement of European and national rules. Furthermore, adopted laws should be reviewed carefully by the Commission to identify possible gaps, inconsistencies or overlaps. These should be eliminated before new legislation is developed.

The Commission asked stakeholders whether they agreed with these priority measures and which additional measures should be taken to foster consistent application and enforcement of European legislation.

There is broad support among the respondents that the FSAP provided the regulatory frame and the necessary tools for integration, thus constituting a major step forward. This meant an enormous improvement compared to the previous legislative setup. The new legislative process is highly transparent. Extensive consultation is carried out to further improve the quality of legislation and to build consensus as much as possible. However, there is always room for improvement.

The priority measures were supported by almost all respondents and the Commission is paid respect for choosing a difficult and politically less "appealing" avenue. A European banking association noted: *"What needs to be done now is in a way more challenging than presenting a new package of legislative action: it will require attention to detail and at times difficult negotiations with Member States and the European Parliament. In short, it is politically not as attractive as presenting a new action plan."*

2.1 Open and transparent consultation

On the consultation process, all respondents are generally very positive. The EU process of lawmaking should be evidence-, and principle-based. Quality of legislation is more important than quantity and speed, a principle the Commission has taken up in its "better regulation" approach already. According to some respondents, for an efficient and successful legislative process it is indispensable that the Council, its subgroups (EFC, FSC) and the level-2 committees will move to a greater degree of transparency as well.

Many respondents agree that well-timed and broad consultation is crucial. Some add that they would like to have more time in the consultation process to further improve the quality of their contributions. A minimum consultation period of three months is suggested. Some note that they would like to receive feedback on their contributions, or – at least – a practical summary of all responses – notably where the Commission is unable to follow stakeholder recommendations. A few explicitly mention that they would like to see small- and medium-sized enterprises and investors more actively involved.

The Commission will continue to rigorously apply open consultations, publish responses received and – if time and resources allow – provide practical summaries and feedback statements to the public. As the amount of input in the Commission's policy making

increases – which is applauded -, agreement on some practical arrangements is welcome. For the Commission to be able to read all contributions and respond to requests for more transparency and feed-back, it is crucial that contributions are received on time, are short and concise (10 pages will often be sufficient), written in a working language of the Commission and contain a minimum of overlaps and duplications.

2.2 Impact Assessments

The use of *ex-ante* impact assessments and cost-benefit analyses are highly recommended by most of the respondents. These should be conducted at a very early stage and – according to some - by a neutral EU-level body to raise the level of objectivity. A large German bank emphasizes that impact assessments are not a panacea halting burdensome regulation. Methodological shortcomings need to be considered carefully, for instance through codification of techniques, more comprehensive consultation mechanisms and application of full transparency. Others note that qualitative aspects, such as financial stability, or investor- and consumer confidence are difficult to gauge in a satisfying manner. According to a large German exchange: *"The real value of impact assessment lies in the process of quantifying costs and benefits of proposed legislation rather than its concrete results. Impact assessments constitute an add-on too the political decision making process and contribute to set this process on a more objective basis. They cannot serve as a substitute for a diligent political judgement."*

A large number of respondents explicitly mention the significance of the competitiveness of the European Internal Market in this context. Integration means increased competition, supply and variety of financial instruments and products, economies of scale and scope, increased innovation, reduced cost of capital and more employment. For the EU to be competitive globally, regulatory arrangements should be flexible enough to encourage a high degree of innovation and to permit different business models in highly mobile financial markets. A few mention in this context that EU competition policy should be more actively used to foster integration. This should be reflected in the impact assessments.

The White Paper concludes that impact assessments will accompany any new Commission proposal and will not be focusing on costs and benefits only. Methodologies will be shared where possible. The European Parliament and Council are asked to honour their commitment to improved quality of legislation as well. While externalising impact assessments will conflict with the Commission's right of initiative, the Commission will do whatever is possible in practical terms to allow timely external screening. Furthermore, the Commission agrees that Europe's international competitiveness has to be promoted and maintained to make Europe the financial services market of choice for investors and issuers worldwide. The "better regulation" approach will be applied rigorously; each new Commission proposal will be accompanied by impact assessments to scope each issue and determine the most appropriate option. Supplementary action through competition policy is an important complement to financial integration measures; the White paper will refer to the sectoral enquiries in the areas of retail financial services and business insurance which are currently undertaken by the Commission (DG COMP).

2.3 Implementation and enforcement

The Green Paper pointed at the fact that the rate of transposition of Community law by Member States within agreed deadlines was poor.

There is overwhelming agreement that the main emphasis should now shift from legislation to implementation and enforcement. There is also a positive response to the use of "Scoreboards" of the performance of Member States in the implementation of European legislation. A greater use of transposition working groups is applauded, although it is noted that these are run very differently from one directive to another. The Commission's proposal for transposition concordance tables can count on much support. One large bank suggested: *"To ensure continuity, [Commission] staff responsible for negotiating of directives at primary legislative stage should as a matter of course always attend transposition meetings, even if they had moved on to new areas."* Furthermore, consideration should be given by the Commission to dedicate internal resources specialised in and focused exclusively on implementation and enforcement in each Directorate.

The implementation and enforcement of existing legislation has clearly become an overall priority. The Commission will work intensively with Member States and apply the practical processes outlined in the White Paper to monitor progress, ensure accurate implementation and avoid regulatory additions.

Some respondents stress that there is insufficient time for transposition in the Lamfalussy regulatory process; work on level-2 implementing measures could only start effectively after level-1 framework directives are adopted. Furthermore, many respondents reflect on the need for more so-called "maximum-", more "minimum-" or more "targeted harmonisation". Also the possible need for more regulations instead of directives is mentioned.

According to the Commission work on both levels should proceed in parallel where possible; only then a politically clear and lasting distinction between level-1 and level-2 measures can be made. Nevertheless, total time for transposition must of course be sufficient and occasionally the average 18 to 24 months transposition period might not be sufficient (as was the case in the implementation of the Markets in Financial Instruments Directive). On the most effective legislative approach to harmonisation, the following statement coming from one respondent broadly reflects the current position of the Commission: *"There is no justification for the adoption of the blanket policy to replace directives by regulations, or the principle of minimum harmonisation by the principle of maximum harmonisation."* A pragmatic, targeted approach will always be needed.

2.4 Ex-post evaluation

Some respondents note that more convergence of the Member States' implementation measures is crucial, since differences between national interpretations and applications of EC-rules can be a major obstacle to further integration. Poor legislation needs to be corrected. One respondent emphasises the connection between *ex-ante* impact assessments and *ex-post* evaluation: *"Ex-ante impact assessments [...] should also be closely linked with complementary ex-post evaluations. It would be particularly important to find reasons for failures and discrepancies between the initial assessment and actual realisations."* Numerous stakeholders explicitly support the introduction of a "fast track" solution to remedy bad legislation or legislation allowing for too many Member States' options – if needed.

A top priority for the Commission is to apply what it calls "a cycle of good policy making", in the following order:

- Open consultation with interested parties
- *Ex-ante* impact assessments
- Examination of options based on evidence gathered
- Where necessary, in line with the subsidiarity/ proportionality principles of the Treaty, a Commission proposal
- Ex-post evaluation, normally around four years after the implementation deadline
- If needed, evaluation could be followed up by simplification, codification and clarification
- If specific legal texts have not worked, they will be modified or repealed

The Commission expects this approach can count on large support from all concerned.

The Green Paper already asked for suggestions for texts that could be repealed.

One UK banking group summarizes what other respondents thought as well: *"We have considered carefully whether we have any nominations for existing EU legislation that might be repealed. We have concluded that – in the financial services area at least – we could not justify a case for a repeal or deletion of an entire directive. The issues we have are with particular provisions and requirements, of the way in which the measures turned out, rather than their original ambitions."* Many respondents point at implicit practical limitations. One large bank expresses some scepticism on repealing legislation as follows: *"Once a proposal is finalized and implemented, the industry has already borne the costs of adjusting systems and practices to comply with the new rules. Any further change would incur additional costs, and should therefore be contemplated only in situations where the actual damage to the broader market and firms' interests clearly outweighs the cost of adjusting to corrective change."*

The Commission concludes that a practical approach is needed here. After all, as was noted by some respondents, the consultation process in general has led to directives being implemented that are, on the whole, acceptable and of economic benefit to the EU. The potential for repeal of FSAP directives is seen to be somewhat limited. However, if needed, the "better regulation" approach will continue to apply; hence consultation and impact assessments will complement any initiative to repeal existing legal texts as well. One possible candidate identified and highlighted in the White Paper is the E-money Directive which is currently being reviewed as it does not seem to serve many providers.

2.5 Simplification, codification and clarification

General

In the Green Paper, the Commission suggested that work should be set in hand to simplify and consolidate all relevant financial services rules. This was elaborated further in Annex I to the Green Paper. The elimination of discrepancies arising between horizontal directives (e.g. consumer protection) and vertical directives (e.g. financial services) was broadly supported by stakeholders. Respondents point in particular at the problem of differences between the E-commerce Directive, the Distance marketing and other directives concerning unsolicited commercial communication.

However, the idea of the Commission to eliminate inconsistencies and overlaps in existing legislation by developing a *"Financial Services Rulebook"* is not supported. Only one respondent urges the Commission to pursue: *"What would be a milestone in crafting a*

competitive, efficient supervisory environment for industry.". Many ask for a more detailed explanation or immediately conclude this would be a near impossible exercise. In total, almost half of the responses comment specifically on this suggestion; several respondents support the notion; many oppose it; and some express mixed opinions or caveats.

In summary, the negative views are, firstly, that codification of directives alone cannot result in added value for the user; directives need to be implemented at national level in order to be effective, whereas codification of national legislation is not the duty of the European Union. Secondly, the good intention of codification might risk leading to over-regulation. Thirdly, there should be no intention to consolidate and replace diverse national market rules and practices; these should continue to exist within the framework of the EU's financial services policy. Fourthly, such a project must not ultimately result in a further increase, rather than a decrease in the complexity of the subject. A common theme in the caveats is that it would take a long time, and that the overall benefit it would bring is not clear, when compared to pinpointed measures aimed at specific problems of legal coherence.

Clearly, there is no consensus among respondents that a codification would be desirable. If considered necessary, the Commission is advised to start with such an exercise in each sector, before looking at the cross-sectoral dimension. A large German bank expresses its full support for a unified code of securities-market rules. A few respondents express the view that any problems of inconsistency stem principally from the fact that the directives are generally based on the principal of minimum, rather than maximum, harmonisation and include different Member State options. Different meanings for the same terms may be inevitable because the directives have different aims.

Furthermore, respondents explain it is not clear where the Commission stood on two main distinctions, namely between: (i) action at the level of Community law versus action at the level of national law; and (ii) a comprehensive consolidation of law into one single code of rules (literally a single rulebook) versus pinpointed measures aimed at specific problems.

The reference to the term "*Rulebook*" in the Green Paper without further clarification created confusion. To clarify the Commission's intentions in this area, Commissioner McCreevy said the following during the Exchange of Views on 18 July 2005:

"To further increase the transparency and coherence of the European legal framework we have also taken up the idea of a single "financial services rulebook" in our Green Paper. This would be a major exercise. The idea here is whether it could be a worthwhile investment to get rid of regulatory overlaps, conflicts, duplication and ambiguities. In short, we need an overall consistency check. Of course, this could not just be a Commission exercise. Since most of the legislation exists at Member State level they would have to cooperate strongly in this. Let me be clear, the financial services rulebook is just an idea on which we wanted to test the waters by putting it in the Green Paper. So far, there is support on the principle but also criticism based on national experience. We will carefully look into the reactions. Do therefore not expect hasty decisions on this. To remove one ambiguity, I do not mean by this exercise that the Commission will be aiming to harmonize all national rule books. No – only ensuring EU-wide texts work together."

Overwhelmingly, respondents explained their appreciation for the clarification by the Commissioner and welcome the Commission's intention to "read across" the directives and national implementations to check for coherence of terminology and effect. They agree that

in order to ensure the robust and clear legal framework this exercise is a necessary precondition for efficient markets in fact being delivered. Support for this came both from those who see this as the starting-point for achieving a single rulebook and from those who see this as an alternative to a single rulebook.

The White Paper further reflects on the above-mentioned statement by the Commissioner. The key idea is to get rid of regulatory overlaps, conflicts, duplication and ambiguities; in other words, to introduce an overall legal consistency check, "reading-across" Community directives and regulations. Even while the aim is to establish a comprehensive consolidation of Community law alone (and not of national law), one would still need to pay close attention to what existing national law is, this being the only way to shine light on the effects of, and embedded problems within, Community law. This check will be carried out in those areas where there are difficulties in implementing legislation because of successive amendments, overlapping or conflicting requirements, or where there is potential legal uncertainty resulting from inconsistent definitions or terminology. A first sectoral consistency check will be carried out in the securities area.

Simplified information requirements

In the Green Paper the Commission analysed the idea of codification and simplification; an area that might merit further consideration, in particular with a view to ensuring consistency and coherence between different texts since the current variety and accumulation of information requirements may confuse both users and service providers on when and which rules apply. For example, a given insurance intermediary providing his services on-line would have to respect four sets of EU information requirements, namely those contained in the Insurance Directives, in the Insurance Mediation Directive, and in the Distance Marketing and E-commerce Directives.

This Commission's simplification idea has been supported by most of the respondents to the consultation. According to one respondent these requirements can create a total of 40 information obligations *vis-à-vis* the customer. The multitude of information requirements and consequent overlaps are mentioned by many other respondents as a reason that providers of financial services cannot comply with all requirements. Some others are more sceptical on this idea, especially if this would lead to codification.

The White Paper refers to the Commission initiative to launch a study reviewing all the existing information requirements in order to assess whether there are duplications or even contradictions between them; this study will be carried out in 2008. The Commission will then decide whether a codified or simplified single set of rules on information requirements is needed. Furthermore, The Commission decided specific clarification is needed on marketing rules in the area of collective investments. Work will proceed on a separate track. The Commission expects to issue a communication or a recommendation in the course of 2006.

2.6 Users of financial services: input, education and redress

The Green Paper emphasised that integration of the financial services market should benefit European businesses as well as consumers. A European reflex by industry is important if we want to deliver further financial integration, be competitive in a globalising world and respond to the public sectors' gradual withdrawal from financing some aspects of social systems. However, as a clear priority, we need to increase consumer awareness as

well; so that consumers are able to compare financial products and make appropriate decisions based on reliable information. As part of this process, the Commission asked stakeholders in the Green Paper how to enable consumers to deal more effectively with financial products and whether this means more professional and independent advice, improved education or financial training is needed.

Numerous respondents underline that the cross-border provision of financial services relies heavily on consumer confidence. Some consumer representatives are concerned that the single market for financial services seems more beneficial for large multinationals than for consumers. Therefore any measure to legislate (especially retail) services must take into account the view of the consumers.

The Commission's attempt to improve consumer education in financial matters is well-received. Respondents agree that consumers should be in a position to make an informed choice. Reference is made to the need for a debate about the information needs of consumers, while the Commission should refrain from patronising consumers or requiring businesses to make up the consumer's mind on their behalf. The Commission is advised to set up of a Financial Services Consumer Panel at EU-level, to organise public hearings and to take further initiatives to promote FIN-USE.

Nevertheless, strengthening consumer education and financial literacy remains difficult. The European Consumers' Organisation points at the high degree of asymmetry of information and (technical) knowledge between the consumer and the financial service provider. It concludes that it appears highly improbable that consumer literacy on financial issues as such will deal with this asymmetry.

In the White Paper the Commission explains that it will endeavour to ensure proportionate representation of users in all future advisory groups; intends to publish a periodic newsletter emphasising the most relevant user/ consumer aspects of its ongoing work; and establish a permanent group of consumer representatives from the Member States, within which financial services issues of particular relevance to consumers will be discussed. Although financial education is the Member States' responsibility, the White Paper also refers to the Commission's plans to stimulate a pan-EU exchange of views on financial education, consumer literacy, to promote best practice and to organise a conference on this subject in early 2007. Furthermore, the White Paper refers to the ongoing review of FIN-NET's role in order to further maximise its efficiency.

2.7 Further reinforcing the interaction with other policy areas

The Green Paper analysed how the Commission could maximise policy synergies over the next 5 years, especially with competition and consumer policy.

Many respondents note that the Commission could expand its range of tools; a wider use of self-regulation and competition policy could be appropriate. Opinions on the extent to which further legislation would be necessary or appropriate are mixed. Some responses urge that the Commission must accept that not all barriers to a single financial market can be solved by legislation. For example, languages and cultural differences will impede a Single Market and are not susceptible to legislative intervention. Others emphasise that any future legislation must be specifically targeted and address demonstrable market failure which could not be remedied by other means, such as competition policy.

Some respondents note that taxation remains a significant issue for firms operating cross-border; some fiscal harmonisation in the domain of company taxation (elimination of problems relating to cross-border losses and transfer pricing), withholding taxes on interest payments made between companies and the VAT treatment of financial services might be beneficial.

The White Paper sticks to the line of the Green Paper; maximum use of policy synergies is key. It further emphasises that a recent Commission survey on barriers to cross-border consolidation in Europe has identified discrimination and uncertainty in tax rules as major obstacles for financial services integration, particularly VAT charges linked to restructuring. The White Paper refers to the Commission's (DG TAXUD) intention, after a broad consultation process with all stakeholders, to present a legislative proposal to adapt the rules on VAT in financial services to the evolution of the Single Market.

3. ENSURING THE RIGHT EU REGULATORY AND SUPERVISORY STRUCTURES

3.1 Making the Lamfalussy process work

In terms of regulation, a significant number of respondents endorse the Lamfalussy process itself as well as its extension. However, there is still room for further improvement. Often mentioned from federations and industry actors alike is the need to improve the operation of Lamfalussy arrangements, to reinforce transparency and cooperation. Some respondents propose that the Lamfalussy committees should notify to the Commission if they identify a need for regulatory guidance to ensure consistency. Others recommend the Commission to ensure that there is close cooperation between the three level-3 committees. Respondents also mention that the European Parliament must be able to use its "call-back right".

A few respondents criticise the work of level-2 (regulatory) and level-3 (supervisory) committees. Some are concerned that powers are not defined clearly enough and that work at level-3 should not pre-empt the Commission's right of initiative at level-1. A few industry associations mention that the committees' mandates need further clarification. Two banking federations and the ECB (in combined format with the national central banks) would like to see a clearer borderline between the scopes of the different levels. A few respondents express concerns about excessive detail and a tendency to over-regulate at both levels 1 and 2.

Although a few respondents criticize the Lamfalussy process for its complexity, the Commission believes the Lamfalussy approach should continue to form the basis for future regulation. However, it should be expanded and the focus switched from the speed of the legislative process to improving the quality of the output. Transparency should be enhanced at all stages of the regulatory process and work must continue to reinforce cooperation and further develop networking between national supervisors so as to assist market participants engaging in cross-border activities.

3.2 Supervisory challenges

General

The Green Paper analysed the need for the supervisory system to have the necessary instruments to make EU financial services regulation work effectively and thus facilitate pan-EU business. In the Annex to the Green Paper a "three-step, evolutionary approach" was suggested, including the suggestion to make maximum use of the current (Lamfalussy) supervisory framework before developing new structures.

Supervisory standards should be effective and proportionate in protecting consumers and businesses and ensure confidence and stability in the financial system. New challenges like increased cross-border and cross-sectoral consolidation or large firms shifting from country-based organizational structures to structures focused on business lines, require a streamlining of the current supervisory structure. The Commission considers convergence of supervisory practices a key task in the next 5 years.

Increasing supervisory convergence

On the issue of supervisory convergence an increased number of EU Member States nourished the potential for diverging and even conflicting application of rules. According to the Commission, the convergence of supervisory practises should be seen in the application of similar solutions to similar problems. More consistent rules across the EU and increased supervisory disclosure could help by making national approaches more easily comparable.

Some respondents ask the Commission to be clearer in its White Paper what it expects in terms of deliverables from regulators and supervisors operating within the Lamfalussy approach. Some respondents (mainly representing the French industry) demand a more "ambitious" approach. The supervisory approach of the Commission appears too shy and lacks a clear policy objective which could inspire this evolutionary approach. One respondent regrets that the Green Paper falls short of expectations in addressing the current insufficient coordination between supervisors. Some respondents, who are in principle in favour of the Commission's approach, call for a more precise roadmap ("critical path") setting out how the further steps and objectives will be reached, with clear political objectives.

Unfortunately, due to size constraints, the White Paper cannot really go beyond the analysis in the Green Paper and its Annex (which remain valid). At the same time, the Commission has tried to be as precise as possible in the White Paper on foreseen deliverables and expectations (including content and timing, see below).

Prudential vs. market supervision

A few respondents suggest making a practical distinction between prudential- and market supervision in the Commission's policy approach. Prudential supervision relates to the soundness of the banking system and protection of depositors. Capital market supervision is concerned with the conduct of business in capital markets and the efficiency, integrity and competitiveness of those markets.

The Commission has not considered such a distinction expedient in the White Paper, as ultimately, both in the area of prudential supervision and market supervision, the aim is to protect investors and prevent financial crises. However, the Commission is willing to elaborate on the need to make a possible distinction between the different types of supervision when moving forward in terms of supervisory convergence.

Support for an evolutionary approach based on "Lamfalussy"

In principle, there is broad support for the Commission's approach as included in the Green Paper; in all sectors and all-over Europe. The large majority of financial institutions, other European and national associations as well as most Member States' authorities (especially those from the new Member States) support the Commission's line of an evolutionary approach. The progress made by application of the Lamfalussy process resulting in closer alignment of regulatory and supervisory practises while maintaining the institutional balances is very much appreciated. More centralised supervision would possibly trigger difficult repercussions for financial stability. Consideration must be given to a number of important issues such as developments in Member States' financial sector and in particular the emergence of important branch operations and markets with high 'foreign' presence;

and the implications of the division of responsibilities between supervisors for cross-border crisis management and other inter-related issues such as liquidity, lender of last resort and deposit guarantee arrangements or winding-up proceedings.

Furthermore, respondents say that the supervisory environment should follow market developments and not *vice versa*. The EU should exploit the full potential of the relatively new Lamfalussy process in the area of financial services using the regulators' current powers. It is far too early to discuss new systems and the creation of new institutions going beyond the existing structures. Such an approach would not realistically correspond to the current and foreseeable stages of market integration and entails the risk of supervision remote from practice.

One large bank notes that it is too early to pass a definite judgement on the Lamfalussy process; there is still room for practical improvements. Conserving the *status quo* is, at best, a practical stop-gap measure, but not a long-term option (multiple reporting requirements remain, implementation remains inconsistent, different supervisory philosophies will distort competition).

Consolidating and Lead Supervision

Another group being slightly more critical consists of the +/- 40 large real pan-EU players in the area of financial services who plead for more centralised supervisory structures which go beyond the Lamfalussy approach. This view is supported by the European Financial Services Roundtable and part of the German and French financial services industry. This so called "lead supervisor model" is primarily driven by the idea to avoid multiple supervision requirements. Many others consider supervisory convergence and intensive cooperation much more appropriate than resorting to a lead supervisor; more emphasis could be put on rationalising and streamlining reporting requirements within the current framework.

Clearly, there are multiple interpretations of the term "lead supervision". Some respondents refer to what the Commission calls "consolidating supervision" (as included in the Capital Requirements Directive; a collegial approach where – only in cases of conflicting opinions – one (home) supervisor has the final say). Only a few respondents really want the Commission to explore areas beyond consolidating supervision or actually would like one supervisor to be responsible for the complete supervision of an institution operating at a pan-EU level. Therefore, The Commission believes many of those referring to the "lead supervisor" actually support the Commission's approach applied in the Capital Requirements Directive, the Financial Conglomerates Directive and (most probably) in the Commission's future Insurance Solvency II proposal. The majority of respondents consider "consolidating supervision" the right way forward.

One important federation stressed that the Green Paper states that consolidated supervision is a long-term goal which cannot be achieved until the Lamfalussy Committees have reached their full potential. The question is raised if we should wait for this to happen or seek the current momentum in order to develop more harmonised structures. In the same vein, some respondents think that in the longer term a system of lead supervision by a single Member State supervisor might be appropriate, should the model of co-ordination not deliver the necessary and expected results. One large insurance company continues: *'The EU's medium-term objective for multinational companies ought to be a single EU monitoring mechanism, operating at both the functional and geographical levels. A first step*

would be the lead supervisor concept, including a college of supervisors. However, as the lead supervisor is still a national figure, such a mechanism would not guarantee unified controls, and is thus a temporary solution.'

One large bank and a European association support the lead supervisor concept as a useful first step, but at the same time warn for possible difficult repercussions for crisis management. They are in favour of a "European System of Financial Supervision" to supervise the systematically relevant financial institutions that operate on a pan-EU basis (resembling the European System of Central Banks). Another respondent concludes it would be inappropriate to establish a two-tier system, whereby EU banks would fall under a specific, EU-system of supervision and local banks would fall under the remit of their local supervisor, as this could lead to a distortion in competition.

What has become clear is that all respondents agree that a single supervisory authority is not considered an appropriate solution and in any case premature. The White Paper concludes that the Commission favours an evolutionary approach, responding to demonstrated problems, striking a balance between efficient supervision and ensuring financial stability.

No extension of supervisory powers

The level-3 supervisory committees should contribute to such a more effective and efficient system of supervision, both day-to-day and in the event of a crisis, by reinforcing cooperation and networking between national supervisors. Numerous respondents from all market segments address the need for further improving supervisory convergence. Some mention that enhanced supervisory cooperation expediently should be accompanied by adequate supervisory transparency; supervisors should share information and disclose national practices or develop common approaches to implementation. Some emphasize that existing supervisory arrangements need streamlining and simplification, especially for cross-border and cross-sectoral groups.

Several respondents explain their scepticism on extending the role of level-3 supervisory committees; supervisory committees should not evolve in legislative bodies and they should not propose guidelines in areas not covered by EC legislation. This would change the nature of the network. They warn against the rising use of soft-law at level-3 which de facto set legally binding rules without possessing a legal and institutional mandate to do so. Although, according to one respondent, granting of equivalent powers to national regulators is desirable, the creation of a "regulator of national regulators" is premature. It might be worth to define the role and the boundaries of the responsibilities of supervisory committees much more clearly. One large bank with material cross-border operations says: *"It might be beneficial to first focus on establishing a strong co-operation between national supervisors, and when necessary, put in place a certain delegation of powers between supervisors."*

Deposit guarantee schemes

The Annex to the Green Paper suggested that, before extending supervisory decision making powers to areas beyond those reflected in the Capital Requirements Directive, a number of key underlying and interrelated issues should be addressed. One of these issues concerns deposit guarantees.

Many respondents noted that the highly heterogeneous character of deposit guarantee

schemes across the EU was a substantial obstacle for the development of an integrated financial services market. One supervisory authority concluded that: *"It is not in line with the Single Market idea that there are differences in the level of coverage and scope for deposits covered by national deposit guarantee schemes and these should be harmonised."*

The White Paper concludes that further work is needed to ensure existing arrangements work effectively on a cross-border basis and are compatible with other arrangements such as lender of last resort provisions and responsibility for financing financial crises. The Commission will come forward with a communication on this issue in 2006.

Mediation

The Green Paper suggested that to strengthen EU's enforcement mechanisms further and to ensure legal consistency and predictability, mediation and alternative dispute resolving might be helpful.

Some respondents note that mediation mechanisms do not seem to fit with the spirit of the Lamfalussy process focusing on harmonisation of practices and are currently not perceived as a pressing need. Others think that the concept of mediation mechanisms is an interesting one. However, it is particularly stressed that if implementation at Member State level is faulty, then the correct way of resolving this is through the Commission and the European Court of Justice, rather than by giving any additional powers to supervisory committees.

The White Paper concludes that there is a clear need to further explore delegation of tasks and responsibilities. Mediation mechanisms could be useful if rapid and effective resolution of simple day-to-day cross-border disputes between supervisors is needed.

Reporting requirements

Closer coordination between EU supervisory authorities should also aim to reduce and abolish multiple reporting requirements. One respondent emphasizes that industry should have the vision to push for a set of harmonised reporting procedures and that this should be a policy objective for the Commission over the next 5 years. Large banks conclude that reporting requirements are an important integration barrier due to diversity and fragmentation of definitions, classifications, time-tables, required level of detail and the technical formats. Furthermore, it is mentioned that there is a tremendous lack of transparency in reporting requirements (difficult access, ambiguous status). According to an important respondent, supervisors should develop improved systems to eliminate duplicative reporting and to be able to share information. In the longer term, the aim should be for the supervisors and the supervised to develop one common and streamlined reporting framework, standardised data requirements and reporting dates for each sector of the EU. There should be common EU-wide data formats for all prudential, market data and statistical reporting.

The White Paper concludes that a simplified common data and reporting template must be delivered by the supervisors by 2008, so that from 2009 onwards reporting requirements can be fulfilled by sending only one complete reporting package to the competent supervisor at consolidated level. The extremely high administrative burden originating from diversity in reporting requirements, recognised as a significant barrier for financial integration and consolidation at pan-EU level, is unacceptable; according to the

Commission there is no valid reason why diversity is needed here.

Reinforcing supervisory cooperation

In more general terms, some respondents explain that the market would welcome a little more integration and trust between EU supervisors. They would welcome improved supervisory co-operation through consultation mechanisms, joint working groups, unilateral delegation of casework on individual institutions; peer reviews, more common training programmes, secondments and exchanges of personnel. The decision making process is considered not yet ideal as the unanimity rule for any collegial decision might impede their constructive work.

The White Paper concludes that all these suggestions are welcome and all contribute to a real pan-EU supervisory culture which should be developed over the next 5 years.

4 ONGOING AND FUTURE LEGISLATIVE ACTIVITIES (2005-2010)

4.1 Ongoing projects

The Green Paper suggested that as a priority, however, only after consultation and thorough impact assessments, remaining elements of the FSAP, like (possibly) Clearing & Settlement and Insurance Solvency II, as well as initiatives in the area of payments and (possibly) capital requirements for regulated markets, should be completed.

Market participants mainly agree with the Commission's suggestion. Numerous respondents from all market sides underline the issue of payment services as a matter of priority. They clearly state that efforts in this area are welcome. A significant number of respondents supports the suggestion to prioritise Clearing & Settlement. It is noted that the high costs for the finalisation of cross border transfers is an obstacle to integration. Many state clearly that their support would depend on the outcome of an impact assessment; part of the market is yet not convinced a directive is needed.

The Commission is currently carrying out a very thorough consultation and impact assessment on Clearing and Settlement; all comments received on the Green Paper on Financial Services Policy (2005-2010) will be taken into account in this separate track.

The White Paper concludes that the initiatives in the area of retail banking (Mortgage Credit, Consumer Credit and the New Legal Framework for Payments) are indeed recognised as priorities and are well on track. The same is true for the preparation of the Insurance Solvency II Directive. However, support for a possible initiative in the area of capital requirements for regulated markets was weak. As a result, and based on its own *ex-ante* judgement, the Commission decided not to plan any new legislation in this area (see also Section 4.3 below). Furthermore, as a policy response to the survey on cross-border consolidation in the financial sector, the White Paper also announces the need to revise the legislation on the supervisory task to review qualifying shareholdings in the banking, insurance and securities area (see also Section 4.2 below).

4.2 Reflections underway

General

The Green Paper indicated that in certain areas the Commission might reconsider its proposals. For instance, the Commission might consider withdrawing its proposals for signature of "The Hague Convention", responding to concerns expressed by some Member States and the ECB.

Many respondents support the reflection as such. On the "The Hague Convention" views are mixed. One large EU clearing house concludes there is currently too much legal uncertainty. Current rules remain limited to the EU and do not address the rest of the world, neither all aspects of the securities holdings, nor all market players within the EU. As these shortcomings are precisely what the Hague Convention seeks to address, the Commission is strongly advised to maintain its proposal. Also the largest banks operating globally express their concern about further review as the Convention represents a careful balance and hence do not agree that late stage reservations have credible justification. Other

concerns expressed point at the need to give due consideration to the draft UNIDROIT Convention on harmonised substantive rules regarding securities held with an intermediary. In any case, a lengthy review is rejected by many. However, one Italian Bank welcomes the halt, as the Convention: *"Would benefit only clients that ask for the application of the UK or US legal rules, to the detriment of continental domestic laws."*

The White Paper concludes that the Commission will soon have prepared a legal assessment evaluating the concerns raised on "The Hague Convention"; to help the Council to decide whether to accept the Commission's current proposal for signature. Furthermore, the White Paper refers to ongoing evaluations whether there is a need (1) to maintain or withdraw the E-money Directive, and (2) to propose legislation in the area of insurance guarantee schemes. On the latter specific suggestion scepticism dominates. According to a national insurance association, such an initiative would be superfluous, harmful and distort competition. An extension to non-life insurance would in any case be unacceptable as there are no savings elements involved.

Cross-border consolidation

Cross-border consolidation in the financial services sector is lagging behind average. The need to eliminate unjustified barriers to cross-border consolidation can count on broad support. However, an organisation representing UK business approaches things from another perspective: *"One factor inhibiting cross-border consolidation may be that the business opportunities for consolidation and growth are sometimes more favourable in other parts of the world."*

Some respondents from the banking sector express their concern about further consolidation in the market. They argue that consolidation could lead to even higher concentration rates of financial services institutions in one Member State, with potential negative consequences for competition and in the end also for consumers. In those markets, which already show a high level of concentration of financial services, further consolidation should be monitored critically by the Commission. Furthermore, a full commitment to investor protection is also seen as a condition for continued success and development of cross-border access. Two EU banking associations express that a pluralistic banking market is necessary to allow consumers to choose from a large variety of providers.

Many respondents argue that high priority should be given to the removal of discriminatory fiscal rules (for instance in the mortgage credit market and in VAT treatment). Such rules are often a decisive factor for the non-execution of cross-border operations. *'It is disquieting that VAT issues have not been covered in the Commission's Green Paper'*, stresses the European Financial Services Round Table. *"This is considered particularly harmful because any attempt to achieve synergies and to improve efficiency [...] is blocked due to the cascading effect of VAT."* A bank with many cross-border activities adds: *"Cross-border VAT on internal services would add an extra and final cost of up to 25%, compared to competitors operating only nationally, or outside the EU. That cost would in practice constitute a major competitive penalty for a full cross-border integration strategy."*, and *"If the concerns regarding the "one-entity-approach" as well as the overall lack of neutrality of the VAT treatment of financial services are not satisfactorily solved, the European financial sector will to a large extent be prevented from adopting competitive structures on a global financial market."*

The White Paper refers to the follow-up action to eliminate unjustified barriers to cross-border consolidation. Here, work is expected to start in 2006 – amongst others taking into account the discriminatory fiscal issues brought forward by respondents.

Regulatory approach/ "26th regimes"

In the Green Paper, the Commission asked stakeholders what the (dis)advantages of the various models for cross border provision of services are and whether there is a business case for developing optional instruments, so-called "26th regimes", and which business lines might benefit. The "26th regimes" might serve as an alternative to the "classical" regimes, namely harmonisation combined with mutual recognition. Such a "26 regime" would not have to comply with any of the existing 25 national regimes (often transposing EU legislation).

The respondents generally find the idea of a "26th regime" vague. This resulted in the view of some respondents to the consultation that, before the Commission invests time and resources in further action in this area, the promoters of the idea of a "26th regime" should elaborate on how they envisage it should work, test it and demonstrate how a "26th regime" can be agreed on more easily than on harmonised rules with mutual recognition.

Other respondents support the idea of a feasibility study (on a case-by-case basis), but at the same time, with an exception of a couple of respondents from the insurance industry, already express their reservations as to the practicality of a "26th regime". According to an EU banking association: *"It should neither be seen as a panacea to the problem of harmonisation, nor as an alternative to targeted harmonisation, but as an option that may have certain application, in certain circumstances."* Main concerns expressed in this regard are the legal uncertainty and confusion of the consumers due to the interface of such regime with the national legal systems and the practical and political difficulty for the Member States to agree on such a regime. Based on these arguments, many respondents, including consumer representatives, vigorously explain that they do not support the "26th regime" Quite a few respondents express their preference to the existing regulatory approaches and question why a "26th regime" would be a better option than full harmonisation or mutual recognition.

Regimes of this kind already in place, such as the European Company Statute, have not proved particularly popular, according to a law society. *"Continuing reliance on national legislation to dictate the way in which the European Company operates [...] has actually led to the creation of 25 different versions of the 26th regime, rather than one uniform EU regime."* One large bank urges for caution: *"While we appreciate the attractiveness of what appears to be a relatively easy way to permit consumers and operators to be active cross border, in some sense this amounts to a tacit admission of defeat on barrier reduction, where we would argue the most vigorous efforts should still focus. In addition, a new 26th regime risks adding an additional regulatory layer and further complexity, which runs contrary to the Commission's overall goals of less and better regulation. Furthermore, the lessons of product regulation such as UCITS are that such product focused initiatives often prove too inflexible to move and adapt to changing market conditions."* Reference is also made to the European Economic Interest Grouping and the European Company Statute, which, as creations of a new European regime from scratch, were – according to the respondents - not particularly successful either. According to representatives of the EU securities markets: *"If prescriptive EU legislation acts as a barrier to cross-border*

participation, revision of EU legislation is more likely to solve the problem than launching a new and untested "26th regime." The German financial industry continues: *"If the assumption is correct that a major reason why customers refrain from doing business across borders is that they have insufficient knowledge of "alien" legal systems, this would obviously apply to a 26th regime as well."*

Due to this general scepticism and vagueness of the concept of a "26th regime" and taking into account its "better regulation" approach, the Commission emphasises in the White Paper yet not to be convinced that "26th regimes" can bring significant benefits.

4.3 Areas in which no legislation is planned at this stage

In the Green Paper the Commission asked stakeholders whether they agreed with the identified measures where the Commission might decide to take no action, or if there are other concrete areas where the Commission should not bring forward proposals presently in the pipeline or, indeed, areas where the Commission should consider withdrawing legislation. Concretely, the Commission suggested not to propose new initiatives in the areas of rating agencies, financial analysts and takeover bids (where implementing measures were still pending).

On the suggestion not to propose legislation in the area of credit rating agencies the responses are mixed. One respondent stresses the need because of the specificities of the securities market: a small number of competitors, no supervisory regime; and a lack of transparency in the rating process. Another expresses its reservations about the Commission's stated intentions as ratings will become increasingly important under the Basle II rules; hence, the Commission should be vigilant, rather than inactive. The majority, however, agrees that any work relating to credit rating agencies has to be done in a global context by means of self-regulation based on the IOSCO's Code of Conduct. Even more so, considering the Commission's commitment to only act where EU initiatives bring clear economic benefit to industry, markets and consumers. According to one respondent an EU requirement might be needed so that agencies bound by the IOSCO Code are required to apply the "comply or explain" rule. One bank warned that regulatory oversight might be counter-productive, particularly given the difficulty in regulating a process that relies so heavily on qualitative factors: *"Regulatory initiatives might lead investors to believe that ratings have a regulatory seal of approval and result in over confidence in and over reliance on ratings."*

Likewise, there is consensus that financial analysts are sufficiently regulated within the current framework of rules. A reasonable equilibrium of legislation and self-regulation should be worked out. The European Federation of Financial Analysts Societies refers to the very different qualification policies and legal frameworks for financial analysts in the EU, which requires unification. A relevant EU qualification needs to be introduced, as well as a European passport. According to an UK insurance association, such more global issues should be subjects for the EU-US Regulatory Dialogue.

The European Banking Federation and some other respondents welcome the Commission's statement that there will not be any implementing measures associated with the Takeover Bids Directive. Furthermore, a large EU exchange expresses serious doubts on the usefulness of a possible directive governing capital requirements for regulated markets.

The White Paper explains that, for the time being, existing regulatory requirements on the respective issues are sufficient. Therefore, the Commission is not planning any new legislation in these areas, nor in the area of capital requirements for regulated markets (see above).

4.4 Future initiatives

Asset Management

Reference is made in the Green Paper to possible targeted new initiatives that might bring benefits to the European economy. Initiatives in Asset Management and retail financial services were outlined as possible candidates.

There is a broad consensus that the asset management regulatory framework needs to be further strengthened and developed. Development of a coherent separate “business line” for asset management is supported.

However, it goes beyond the scope of this document to provide a detailed analysis of all comments received. The White Paper includes a short summary on the Commission's work to enhance the framework for the fund industry, which takes place in a separate track. A separate Green Paper on asset management was published in July 2005. All relevant comments received on the Green Paper on Financial Services Policy will of course be taken into account in further work on Asset Management. A separate White Paper will follow in the second half of 2006.

Retail financial services

The Commission asked stakeholders whether they agree with the retail issues identified in the Green Paper, or if they would suggest other areas where additional action at EU level could be beneficial. Areas that – according to the Commission – could possibly merit further consideration were: (1) Codification and possibly simplification of existing rules on information requirements (see further Section 2.5 above); (2) Bank accounts; and (3) Financial intermediation (see below).

A majority of respondents suggest – in a general context - that further integration of the retail markets is desirable. Although integration of the distributions side and customer relationship management is more difficult, many assume that as retail integration progresses, there are great potential synergies in the area of product development, contract design and back-office. Some respondents point at their own experience and conclude there is definitely a cross-border market for retail financial services in Europe. This would bring lower costs through economies of scale and consumer access to a greater range of products. Although language and cultural barriers cannot easily be addressed, according to some respondents, other barriers – for instance different taxation regimes, divergent contract laws or data protection rules - should be tackled. Some highlight the undue fragmentation of the leasing market in this regard and call for action on EU-level.

A minority questions whether integration of retail markets is really a feasible objective; they suggest that a different level of integration is appropriate for retail markets – especially in comparison with wholesale markets. Some sceptical respondents point at the marginal part of current cross-border retail banking; *"Consumers still seek to establish close relations with their financial service providers"*, according to one large national banking federation.

Furthermore, in the area of insurance, on the supply side, insurers are reluctant to provide cover in markets where they do not have a good understanding of the risks. *"The costs of EU legislation will fall on all insurers, including those who confine their operations to their national markets, while the benefits will accrue only to those operating cross-border."*

Contrary to the above, there are very explicit views on the challenge Europe faces in opening up the fragmented retail markets. According to the European Banking Federation: *"The current, undisputed, fragmentation of the European banking market is not merely the result of a voluntary decision on the part of consumers; nor can the scarcity of supply of cross-border financial services be taken to indicate an absence of consumer demand. It is owing rather to the fact that foreign banks experience difficulties entering other markets."*

The largest German bank also has very explicit views: *"There is no reason to assume that consumers and suppliers of retail markets would not benefit as much from market opening as actors in wholesale markets. In the era of the internet, it is outdated and wrong to assume that consumers have a natural inclination to turn to their local and more familiar institutions, and even more so to assume that such an inclination entails a natural predisposition to eschew offers by non-local institutions. Cultural differences should not be overestimated as an obstacle towards integration of retail markets, nor should the willingness of customers to engage in cross-border transactions be underestimated."*

Other respondents question the way integration is being promoted. They argue that product variety is more important than product harmonisation for further integration of the European retail market. Product harmonisation reduces variety and would deter consumers from purchasing financial services on a cross-border basis. The Commission should therefore pay close attention to the perseverance of product variety in the integration process.

Recognised as a specific problem are the divergent consumer protection rules across the EU. Many conclude these have a dampening effect on cross-border integration. A European building society noted: *'It is still not possible to offer a financial service product unchanged in another Member State of the EU [...] due to the Rome I Convention.'* Also, the broad interpretation of the term "the interest of the general good" was mentioned. A consumer panel urges Member States to stop the abusive use of such Treaty provisions.

Others, amongst which the French Government, consider consumer protection as a *sine qua non* for the genuine internal market for financial retail services: *"Consumer protection needs to be granted the same priority as market integration and financial stability."* Clearly deriving from the respondents is the argument that a balance needs to be found between efficient consumer protection and additional barriers to cross-border financial services provision. However, there is considerable disagreement about the extent to which consumer protection is an appropriate matter for harmonisation at EU-level.

Due to the importance of consumer protection, underlined by many respondents, the integration strategy for retail markets should be supported by measures of confidence building that ensure the protection of consumers in an open market. Consumer protection is necessary to build consumer confidence in cross-border services and products. Such consumer confidence can be built up e.g. by clear and complete product information to enable consumers and SME to compare products more easily. However, both suppliers and buyers of financial products mention that an overload of information should be avoided.

Overall, most respondents support the Commission to consider to give further attention to

opening up the still largely fragmented retail financial services markets and to allow consumers and businesses to reap the benefits of cross-border competition. The Commission's commitment to apply the "better regulation" approach on any new initiative, including a thorough and convincing economic and impact assessment, is particularly welcomed. The respondents stress that the Commission's willingness to adopt a bottom up, consultative approach, involving all market participants, including users, at every stage is particularly relevant in the field of retail financial services.

Accordingly, the White Paper does not contain a big-bang approach. The Commission will start the process of opening up the retail financial services markets by taking consultative steps rather than general or specific legislative action. These steps, such as the establishment of expert groups and the launch of studies, should help the Commission to make evidence based decisions prior to the taking of any concrete actions. As for any other area covered by the White paper, any possible initiatives will be accompanied by prior impact assessments.

Bank accounts

In the Green Paper the Commission suggested that bank accounts could be an area that merits further consideration. There is a general agreement by the respondents that it should be inquired what barriers exist in the area of bank accounts. According to the European Consumers' Organisation, consumer mobility is crucial to allow for competition to develop: *"Too often, consumers are discouraged from switching, as the opportunity costs of doing so are so high."* A large German bank stresses that the precondition for written form hinders the cross-border conclusion of on-line contracts, especially in the field of opening bank accounts. The European Banking Federation is also supportive and emphasized the need to further reflect on the opening of bank accounts on-line.

Views differ on the issue of portability of a bank account number, which was flagged in the Green Paper. While the users argue in favour of portability, the banking industry is strongly against; claiming that the cost of ensuring such portability would considerably outweigh its expected benefits. Further promoting the use of the "IBAN" system should be the right way forward. According to an EU consumer organisation: *"A more simplified unique numbering system for bank accounts has to be considered, to promote efficiency and allow for number portability."* An Italian bank concludes that with clearing houses working at purely national level, banks cannot execute directly cross-border transactions and expresses its strong support for the establishment of a European system of clearing houses.

The White Paper does not refer to the portability of account numbers. The focus of the Commission should be on removing barriers to user mobility (e.g. cross-border opening of accounts (including online), closing fees, transfer between banks). The creation of an expert group consisting of industry, user and consumer representatives, whose role will be to identify existing problems associated with user mobility, is considered as a prudent first step and not the final say. Therefore, in parallel, the Commission should study the potential business case for taking initiatives, also building on the ongoing sector enquiries in the competition field.

Credit intermediaries

In the Green Paper the Commission suggested the issue of financial intermediation as worth being further explored. The Commission noted that initiatives have already been

taken in this area (Insurance Mediation Directive and the Markets in Financial Instruments Directive). It stems from most of the contributions to the consultation that there is - indeed - currently no need for further action in these areas for which EU rules are very recent. Furthermore, the Green Paper suggested the intermediaries should apply full transparency of fees and relationships with providers.

It has become clear that there may be a need for further action in the area of credit intermediaries. However, first we need to see some experience on the above-mentioned existing directives, which has been signalled also by some respondents (e.g. European Banking Federation). Therefore, the Commission should have a study available in the second half of the 5-year program (2008). The study's purpose should be to gather information about the rules applicable to credit intermediaries in all Member States and to identify any problems that divergences of rules in this area might cause for the Internal Market. In case the study demonstrates that - either the divergence of the rules applicable to credit intermediaries in Member States or the fact that a single intermediary is subject to different requirements depending on the product - causes problems for the Internal market, the Commission might envisage adequate solutions, while applying the principles of "better regulation".

Many responses also focus on the principle of transparency regarding fees and relationships, notably those between banks, financial institutions or other intermediaries. However, the views are mixed. Some think that such information would be delicate commercial and competitive information. One consumer panel disagrees: *"Issues like remuneration systems for salespeople and advisers almost always encourage mis selling and put a question mark over the advice they offer."* A large UK bank supports full transparency and mandatory disclosure of intermediaries' commissions and other forms of remuneration. Two workers' representatives urge the Commission to address the conflict between selling and giving advice: *"Employees should not be pressured between individual sale goals to sell a certain product and giving the customer objective and adequate service."* Another respondent strongly recommends that consideration is given to exploring whether the principles of financial qualifications for advisors should be harmonised.

The Commission will take the above-mentioned considerations into account in its future work in this area.

5 THE EXTERNAL DIMENSION

The Commission's Green Paper argued that enhancing EU's influence on the global stage and ensuring the global competitiveness of EU's financial sectors should remain a priority; this reinforces the need for closer cooperation between EU-authorities and those of the main EU trading partners.

Almost all respondents underline the importance of global competitiveness for the European financial market. The access of European firms to international financial markets has to be ensured. Supervisory rules and accounting standards act as a good example for topics with potential sensitive extra-territorial consequences. Any new regulation must take into account its potential impact on Europe's international competitiveness.

Some respondents emphasize that European companies must not face an unfavourable competitive position relative to – for example - American companies. Overlaps with other jurisdictions have to be addressed thoroughly. Many respondents explicitly support the Commission's EU-US regulatory dialogue. Some welcome more feedback from the Commission on these dialogues. Several respondents ask the Commission to resolve the issue of cross-border positioning - without artificial barriers - of trading screens and the issue of de-registration from the SEC. All respondents to this topic mention that the regulatory dialogue should not only focus on the US, but should entail other countries and regions that are important to the EU as well. The emergence of China and the evolution of relations with Japan and other parts of Asia (including member countries of ASEAN and Korea) have to be fully reflected. Also, other candidates for strengthened dialogue, like Russia, Brazil, Switzerland, South Africa and member countries of Mercosur are mentioned.

In the White Paper, the US, Japan, China, Russia and India are mentioned as being the Commission's priorities in terms of dialogues and cooperation on financial issues. However, it should be clear that this is not an exhaustive list; the Commission will of course try to establish good bilateral relationships with other countries and other regions as well, including all the ones suggested.

Furthermore, many respondents mention that the EU should expressly aim for speaking with one voice at international level to achieve an equal footing with its global partners and to influence the outcome of negotiations on international standards. The need to strengthen EU coordination is effectively reflected in the White Paper; effective EU coordination on the international scene makes Europe - and our case of mutual interest – much stronger.

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List of Respondents

Consultation on the Green Paper Financial Services Policy (2005-2010)

<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>MI</i>	=	<i>Miscellaneous</i>

ABI Association of British Insurers (IP-UK)
ABN Amro (B-NL)
ABP Pension Fund for the Dutch government and educational sector (IP-NL)
ACCA Association of Chartered Certified Accountants (MI-UK)
ACT Association of Corporate Treasurers (MI-UK)
ADICAE Spanish Association of Bank, Saving Bank and Insurance Users (C-ES)
AFEI Association Française des Entreprises d'Investissement (AM-FR)
AFG Association Française de la Gestion Financière (AM-FR)
AFPEN Association Française Professionnelle de l'Épargne Retraite (IP-FR)
AFTI Association Française des Professionnelles des Titres (S-FR)
AIFA Association of Independent Financial Advisers (MI-UK)
AISAM-ACME Association Internationale des Sociétés d'Assurance Mutuelle (IP-EU)
AmCham American Chamber of Commerce to the EU (MI-US)
APCIMS Association of Private Clients Investment Managers and Stockbrokers (AM-EU)
Assogestino Association of the Asset Management Industry (AM-IT)
Austrian Ministry of Finance, Financial Markets Authority and Nationalbank (G-AT)
AVIVA plc (IP-UK)
AXA (IP-FR)
Banca Intensa (B-IT)
Bank of Finland (B-FI)
Banque de France (B-FR)
Barclays plc (B-UK)
BBA British Bankers' Association (B-UK)
BDB Bundesverband Deutscher Banken (B-DE)
BEUC Bureau Européen des Unions de Consommateurs (C-EU)
BIPAR European Federation of Insurance Intermediaries (IP-EU)
BP Plc British Petrol (MI-UK)
BSA The Building Societies Association (MI-UK)
BVI Bundesverband Investment und Asset Management e.V. (AM-DE)
BVR-VÖB-DSGV joint contribution (B-DE)
CAFOD Catholic Agency for Overseas Development (MI-UK)
CBI (MI-UK)
CCBE Conseil des Barreaux Européens (MI-EU)
CEA Comité Européen des Assurances (IP-EU)
CEBS Committee of European Banking Supervisors (G-EU)
CEIOPS Committee of European Insurance and Occupational Pensions Supervisors (G-EU)
City of London (MI-UK)
City of London Law Society (MI-UK)
CML Council of Mortgage Lenders (B-UK)
COFIDIS (B-FR)
Confrontations Europe (MI-FR)
Credit Agricole SA (B-FR)
CSF Confederation Syndicale des Familles (MI-FR)
Czech Republic Ministry of Finance, National Bank and Securities COM (G-CZ)
Danish Bankers Association (B-DK)
Danish Parliament (G-DK)
Deutsche Bank (B-DE)

Deutsche Börse (S-DE)
 DFSA Danish Financial Supervisory Authority (G-DK)
 DVFA Deutschen Vereinigung für Finanzanalyse und Asset Management (AM-DE)
 EACB European Association of Co-operative Banks (B-EU)
 EACT European Association of Corporate Treasurers (MI-EU)
 EALIC European Association for Listed Companies (S-EU)
 EAPB European Association of Public Banks (B-EU)
 EBIC European Banking Industry Committee (B-EU)
 EFBS European Federation of Building Societies (MI-EU)
 EFFAS European Federation of Financial Analysts Societies (S-EU)
 EFR European Financial Services Round Table (MI-EU)
 EFRP European Federation for Retirement Provision (IP-EU)
 ESGB European Savings Bank Group (B-EU)
 Estonian Ministry of Finance (G-EE)
 EURELECTRIC (MI-EU)
 Euroclear SA NV (S-BE)
 Euronext (S-NL)
 Europlace Paris (MI-FR)
 Eurosystem comprising the ECB and the national central banks of the Euro area (G-EU)
 EVCA European Private Equity & Venture Capital Association (AM-EU)
 FBE European Banking Federation (B-EU)
 FBF Federation Bancaire Française (B-FR)
 FEE European Federation of Accountants (MI-EU)
 FESE Federation of European Securities Exchanges (S-EU)
 FFSA Fédération française des sociétés d'assurance (IP-FR)
 FIN-USE Expert Forum of Financial Services Users (C-EU)
 Financial Services Consumer Panel (C-UK)
 Finnish Financial Supervision Authority (G-FI)
 Finnish Government Ministry of Finance (G-FI)
 FLA Finance & Leasing Association (B-UK)
 FOA Futures and Options Association (S-EU)
 Forderungsverein der primaerbanken (B-DE)
 FPSB Austria Österreichischer Verband Financial Planner (MI-AT)
 French Government (G-FR)
 FSI Financial Services Ireland (MI-IE)
 Futures and Options Association (S-EU)
 Galileo Global Advisors (MI-US)
 GDV Gesamtverband der Deutschen Versicherungswirtschaft (IP-DE)
 Generali (IP-IT)
 Goldman Sachs (B+AM-UK)
 Graham Bishop (MI-UK)
 HBOS plc (B-UK)
 Heutger Viola Vrije Universiteit Amsterdam (MI-NL)
 Hungarian Ministry of Finance (G-HU)
 HVB HypoVereinsbank Group (B-AT)
 IBF Irish Banking Federation (B-IE)
 ICMA, ACI, AMF, BSDAI, BMA, DSDA, FASD AND LIBA in Joint response (S-EU)
 IFDS International Financial Data Service (MI-UK)
 ILAG Investment and Life Assurance Group (IP-UK)
 IMA Investment Management Association (AM-UK)
 Initiative Finanzstandort Deutschland (MI-DE)
 ISDA International Swaps & Derivatives Association (S-EU)
 Latvian Ministry of Finance (G-LV)
 Law Society of England and Wales (MI-UK)
 Lloyd's Worldwide Markets (IP-UK)
 Lloyds TSB Group (B+IP-UK)
 LME London Metal Exchange (S-UK)
 LSE London Stock Exchange (S-UK)
 MEDEF Mouvement des Entreprises de France (S-UK)
 Morgan Stanley (B+S+AM-UK)

NFU Nordiska Finansanstalldas Union (C-SE)
Nordea Bank AB (B-SE)
Norwegian Ministry of Finance (G-NO)
OMXE OMX Exchanges (S-FI)
Österreichischen Bundesarbeitskammer (C-AT)
Österreichischen Raiffeisenverbandes (B-AT)
PIU Polish Chamber of Insurance (IP-PL)
Polish Government (G-PL)
Prudential Plc (IP-UK)
QCA The Quoted Companies Alliance (S-UK)
Raiffeisen Bankengruppe Österreich (B-AT)
Raiffeisen-Revisionsverband Niederösterreich-Wien (B-AT)
Raiffeisenverband Tirol (B-AT)
RBS Group Royal Bank of Scotland (B-UK)
Reuters Ltd (MI-UK)
RLB Raiffeisenlandesbank Karnten (B-AT)
Royal & Sun Alliance (IP-UK)
Schroders (AM-UK)
SFE Scottish Financial Enterprise (MI-UK)
Standard & Poor's (MI-UK)
State Street Corporation (S+AM-US)
States of Jersey (G-UK)
Swedish Ministry of Finance, FSA and Central Bank (G-SE)
TI Telekommunikationsindustrien i Danmark (MI-DK)
UK FSA Financial Services Authority (G-UK)
UNI-Europa Finance (C-EU)
Universite de Barcelone Llacer Matacas+Gramunt Fombuena (MI-ES)
VDEW Verband der Elektrizitätswirtschaft e.V (MI-DE)
Verband deutscher Pfandbriefbanken (B-DE)
VVO Versicherungsverband Österreich (IP-AT)
WKO Federal Austrian Economic Chamber bank and insurance dept (MI-AT)
WKO Federal Austrian Economic Chamber, financial fiscal and trade policy dept (MI-AT)
WOCCU World Council of Credit Unions Inc (C-EU)

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