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European Commission  
Internal Market DG  
Green Paper on Financial Services Policy  
(2005-2010)

## **Comments to the Commission's Green Paper on Financial Services Policy (2005-2010)**

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### **General comments**

Sweden welcomes the work that has been done in the Commission's Green Paper on Financial Services Policy to create a common strategy for financial services post FSAP. We strongly support the excellent job undertaken by the Commission with respect to the transparency of the policy making process through, among others, open consultations.

We have divided our consultation answer into two main parts. The first part contains our comments on the key political orientation, the second comments on the new initiatives for action proposed by the Commission. In the second part we have added to the list of new initiatives suggested by the Commission the issue of deposit guarantee, which we believe to be an urgent matter that calls for common action at the European level.

### **1. Key political orientation**

#### *1.1 The Lamfalussy process*

There are many benefits to the Lamfalussy process as a more efficient method of financial markets legislation at the EU-level, and we believe that the Lamfalussy framework has further potential to improve the legislation process within the EU. In some cases, where the process has not been used fully or in the way that it was originally intended, it has unfortunately contributed to more detailed regulation, without clear benefits to market players. The Lamfalussy process should be used in the way that it was originally intended, i.e. that level 1 directives should contain framework provisions, and detailed provisions should be left to comitology. The extent of detail at level 2 must always be balanced against the effectiveness of the

regulations. Everyone involved in the legislative process (Commission, Council and Parliament) must bear in mind that the implementing rules laid down through comitology must not contribute to over-regulation. It should be avoided that detailed regulation at level 1 results in even more detailed regulation at level 2, which in its turn would lead to over-regulation all in all.

In order not to undermine the confidence in the Lamfalussy process, there is a need for more realistic timetables for transposition. The legislative process in different Member States strongly influences the time needed for transposition.

Furthermore we think that the legislative form of implementing rules should preferably be the same as that of new rules adopted by the Council and the Parliament. We believe that there is no reason for using regulations at level 2 in a more systematic manner. First of all, regulations should only be used when it is objectively justified, for example when the issue is limited and of technical nature. Secondly, although a regulation does not in itself need to be transposed into national legislation there is often a need to adjust national legislation because of the regulation, and it is difficult to put all the other legislation in place before knowing the content of the level 2 acts. Thus no time is gained by adopting level 2 measures in the form of regulations (national legislative procedures need to be followed anyhow). Our conclusion is that if the legislative act at level 1 is a directive containing comitology provisions, then implementing measures laid down by comitology should also be in the form of a directive - the legal form of a regulation should be avoided if possible.

### *1.2 Better regulation through impact assessments and cost benefit-analyses ensuring efficiency of new proposals*

We share the Commission's view that impact assessments are necessary for an internal market for financial services. Our opinion is that such assessments must always be based on cost-benefit analyses in order to evaluate the potential economic benefits of a proposal *before* legislative action is taken. Furthermore, a good balance between costs and benefits must be maintained, where the costs for a new legislative regime must be as thoroughly analysed as the benefits, so as to avoid the creation of common legislation for its' own sake. We also support the Commission's plans of *ex post* evaluation of existing legislation in order to assess whether the intended effects of previously adopted directives have been achieved.

We support the overall objective of trying to build consensus on central financial market issues with all major stakeholders. The involvement of market participants and consumers contributes to a correct and well-balanced approach to legislative questions and measures. It also allows the institutions involved in the legislative process to make adequate assessments of the practical, legal and economic consequences for those who are affected by the new EU-legislation. In order to ensure that impact assessments and cost-benefit studies give a good basis for decision making, a best practice or

template for impact studies could be developed by the Commission, stating that they should always contain micro- and macroeconomic effects, legal and practical consequences, costs and benefits for stakeholders, both consumers, authorities *and* service providers, as well as effects on other sectors of the economy. This is crucial in order to find out if the legislative initiatives will lead to the commonly agreed goal, better and more efficient financial services in an integrated European financial market.

The creation of better regulation also requires a clear focus on the global perspective of financial regulation in the internal market. The common goal should be to make the European financial market to be a competitive and efficient part of the global financial market.

### *1.3 Financial supervision*

When it comes to financial supervision we are of the opinion that the effectiveness of new rules does not only depend on “more rigorous enforcement by supervisory authorities”. A level of supervisory enforcement that is proportional to the risks of the institutions under supervision and that meets well with the markets demands must be found. In this context national supervisory authorities must not enforce rules in a way that would hamper or even prohibit the development of new efficient systems, products and services or cross-border competition. Flexible, well functioning, stable and transparent capital markets that meet European companies’ needs for access to capital should be the common objective.

In this context it is important that the supervisory implementing rules that result from the Lamfalussy process must be allowed to gain effect, so that there is a possibility to evaluate their impact on the financial market and financial market players. For instance, the MIFID directive with its comitology provisions will result in substantial costs for companies and financial institutions that cannot be quantified or measured at this point. Several directives have also resulted in substantial increases in costs for the supervisory authorities - costs that cannot yet be assessed.

As to the issue of supervisory convergence we agree that European financial supervision in a cross-border context must work effectively throughout the EU. A pan-European supervisory authority might become useful in the future, but is not immediately called for. Co-operation, in order to reach common standards and principles for supervision, e.g. in and between level 3 committees is of immediate importance. Thus, we support the suggested strategy of the Commission to explore the current framework to the fullest extent before analysing any new structures.

The cooperation at level 3 could be further improved. One should avoid laying too heavy a burden on level 3 committees when tasks are assigned. Furthermore, there is room for better and increased coordination at level 3. Finally, we think that the present level 3 committee structure with CEBS,

CEIOPS and CESR should continue to cover financial conglomerates, as is already the case. Specific conglomerates issues could be solved through a sub-group structure under the existing level 3 committees, if this is necessary, but there is no need for a separate level 3 committee on conglomerates.

#### *1.4 Consolidation of financial services legislation*

Sweden welcomes the initiative of consolidation, simplification and, if possible, the repeal of legislation that ex post has proven to have unintended effects on the European financial market. However, we are of the opinion that the implementation of recently adopted directives should have higher priority and thus more resources should be devoted to this area.

A common goal is an integrated financial market, among others, through harmonisation of financial legislation. Against this background, we welcome the Commission's ambition to conduct a feasibility study on a 26<sup>th</sup> regime. However, we do see possible problems with a 26<sup>th</sup> regime such as regulatory arbitrage, which needs to be taken into account.

## **2. New initiatives**

### *2.1 A common European legal structure for deposit guarantee*

A very important and urgent matter that has to be addressed by the Commission is the review of the directive on deposit guarantee (94/19/EC). Deposit guarantee should be included in the coming White Paper on financial services policy. The current situation with different principles for financing deposit guarantees across member states may lead to a distortion of competition between European credit institutions, especially when Member States face a future increase in cross-border activities in the retail banking sector. In order to avoid this possible distortion of competition and in order to create a level playing field, a common European regime for deposit guarantees must be found. This will in the long run make it easier for banks to provide services cross border in all Member States. The main issues that urgently need to be addressed are:

- in order to prevent moral hazard problems and "unfair pricing", risk-based based fees should be an integrated part of the funding arrangements and fees should be collected mainly ex-ante
- home country responsibility of deposit guarantee should remain a basic principle

### *2.2 Retail financial services*

Sweden supports the objective to increase competition and market integration at the European level in the retail financial services area. We are quite satisfied with the Commission's draft proposal on payment services, especially the shortening of payment services execution times and increased transparency and information requirements for consumers.

However, increased integration cannot be forced by authorities, the regulator can only facilitate and make possible increased integration in retail financial services. A regime shift towards a fully integrated retail financial services market, where European consumers can make use of e.g. banking services from providers in other EU countries must be allowed to develop over time, and above all, must be driven by market demand. It is important that EU legislative initiatives focus on removing *legal* obstacles.

We welcome the Commission's initiative to look into obstacles to opening bank accounts cross-border. It is important that any possible new initiatives are thoroughly assessed and balanced against the need to prevent money laundering.

### *2.3 The European market for risk capital (private equity)*

We strongly agree with the Commission that a well-functioning risk capital market is strategically important for economic growth in Europe. A common European initiative to create a legislative framework for private equity funds, especially venture funds, would improve the prospects of the EU risk capital market to attract investor capital. A legislative framework with tax and company law provisions that are well adapted to the business of private equity funds would facilitate their business and thus increase small and medium sized enterprises' smooth access to risk capital.

### *2.4 Asset management*

We welcome the initiative to review existing legislation on asset management. However, we are not convinced that enlarging the scope of the current UCITS directive to other, currently non-harmonised, funds would be the right way forward. Specific comments will be forwarded in the consultation on the Commission's Green Paper on asset management.

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