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Response to FSAP Evaluation Part I: Process and implementation

I. Introduction

1. The Federation of European Securities Exchanges (FESE) represents operators of the European regulated markets and other market segments. Established in 1974 as a small forum of Stock Exchanges in Europe, FESE today has 24 Full Members representing 36 Securities Exchanges and clearing houses from all the countries of the EU, Iceland, Norway and Switzerland as well as 6 Corresponding Members from other non-EU countries. FESE co-operates with European settlement and securities depository organizations and works closely with the European Association of Central Counterparty Clearing Houses (EACH).
2. We very much welcome the current consultation launched by the Commission. We agree with the proposed structure of the FSAP evaluation, with the first phase focussing on the perceptions of the process and the second phase focussing on the results of the measures once there is a concrete experience with implementation. We therefore greatly appreciate the opportunity to submit comments at this stage.
3. Our response is structured as follows: In the next section, we summarise our views in an **executive summary** (II). Then we provide answers to the Commission's **specific questions** (III). In Section IV, we will comment on the Commission's **recommendations**. Section V will **conclude**.

II. Executive Summary

4. We find that the **package approach** utilised for the FSAP has been essential to realising a systematic reform of the financial sector. Several valuable lessons can be drawn from the adoption of the FSAP package to help us reap the full potential of a package tool in the future (our recommendations focus on realistic timing, well-structured regulatory impacts assessment, putting the quality of each piece of legislation above all other objectives, and proper prioritisation and sequencing within the package). At the same time - in accordance with the conclusions of the Commission's White Paper, particularly the limited nature of the future legislative activities and the primary focus being on consolidation - we do **not see a need to adopt a full set of measures in the form a package in the foreseeable future, at least for regulating the securities markets.**
5. Our general assessment of the application of the **Lamfalussy structure** to capital markets is so far quite positive. The process has so far led to a greater involvement of market expertise via more structured consultations and use of expert groups; clearer primary legislation in the form of Level 1 text; and a potential (albeit untested) possibility to bring legislation up to date (or rectify problems) via use of the Level 2. In general, the problems observed – e.g. an excessive focus on speed, excessive detail and ambiguous language in some cases, inefficient/nontransparent practices in the consultation processes - were the result of factors *extraneous* to the design of the Lamfalussy process itself – above all tight timetables, the lack of a structured application of a better regulation approach, and occasional lack of transparency of the legislative procedure. There we welcome the recognition that the pre-legislative consultation has to be structured into a comprehensive study of all the options and involving all stakeholders, including a full **regulatory impact assessment (RIA)** on an *ex ante* basis. Care should be taken in particular to prevent the process from leading to more time-consuming legislative processes as a result of controversial issues being re-opened for discussion at every stage.

6. We recommend a higher degree of attention to the impact of the proposals on creating unnecessary **regulatory complexity** (and therefore unnecessary regulatory costs and loss of competitiveness). The positive experience of an initiative once used by the Commission, the so-called SLIM initiative, aimed at bringing in industry expertise at an early stage in the legislative process to simplify the regulatory framework, could serve as the basis of a new mechanism to draw cross-sectoral technical market expertise on the legal consistency of the legislative framework (as well as on the appropriate distinction between Level 1 and Level 2), functioning on a purely advisory basis and with full transparency of composition and openness of work methods.

7. While we share the general belief that **Regulations** might in some cases lead to more consistent national application than **Directives**, we find that the specific circumstances of each case need to be considered before determining whether a Regulation is indeed warranted and will lead to a smoother and speedier implementation process. We also stress the importance of national legislative actions to clean up national statute books, which the Commission, citing direct applicability, at times tends not to take into account as much as necessary.

8. Going forward, the success of the Lamfalussy process depends directly on the sufficiency of the resources made available to **Level 3 and Level 4**. Transposition needs to take centre stage from the design stage to the implementation of the legislation. The industry should be more closely involved in the monitoring and rectifying of any problems identified during transposition.

III. Answers to the Questions

III-a) ANALYSIS OF THE STRUCTURE OF THE FSAP

- **What has been your personal experience of the implementation process of the FSAP measures?**
- **Do you consider any of the measures introduced under the FSAP redundant or ineffective?**
- **Do you agree that the fact that the FSAP was introduced as a package was a key driver in the programme being largely adopted by the target date?**
- **Please rank the 3 elements of the process involved in adopting the FSAP programme that you would consider the most important.**

9. The FSAP was initiated at a unique point in time when the entry of the single currency appeared to require a comprehensive package of measures. The special nature of the objectives and the level of market integration present in 1999 arguably justified taking a comprehensive look at the remaining legislative gaps. Given the wide range of measures that were deemed to be required to integrate the financial markets, the use of a package in the introduction of the FSAP held the potential promise of pre-determining the priority actions within a wider program; preventing duplications and contradictions; and identifying the overall regulatory costs on stakeholders so as to maximize the net benefits.

10. At the same time, we have to acknowledge that the FSAP was not conceived as a “pure package” (if we define this as a coherent body of measures that fit together): rather, it included some pieces of legislation that were planned earlier but had not been adopted, and it excluded some items that ended up being absolutely crucial for the objectives of the Single Market (i.e., the revision of the ISD, which was added afterwards). One result was that the sequencing of the individual items may not have been as deliberate as would have been warranted: for example, it may have been worth considering the adoption of MiFID ahead of all other capital markets dossiers to ensure that these

latter dossiers would be fully consistent with the secondary market framework put in place. Moreover, the review of interactions between the measures that are in the capital markets part of the FSAP was not optimal.

11. Putting aside these complications, and focussing on the elements of the FSAP that can be considered as a package, we see several factors related to the introduction of the FSAP that were positive. First of all, the existence of a package aimed at completing the framework for a Single Market was an important factor in generating momentum and shoring up political support behind the measures. Secondly, the package allowed a comprehensive look at the proposed measures required to integrate the markets in various different segments, thereby increasing the opportunities to ensure coherence.

12. Having said that, we also consider that the attention paid to the FSAP package as a whole may have distracted from the attention needed to ensure the quality of each one of the measures in the package, especially in the presence of the very strict deadlines imposed by the FSAP, which did not take into account the realistic timetable needed to prepare, adopt and implement these measures. Moreover, since the FSAP as a package was designed at a time when the structural and practical steps related to better regulation principles had not yet been elaborated in this area, neither the full scope of the package nor the majority of the measures benefited from the standard of regulatory impact assessment the Commission has adopted today.

13. The three elements of the process involved which we would consider as **"the most important" in shaping the outcome of the FSAP process** (whether in a positive or negative way) are the following:

    - Underlying political agreement/endorsement for adopting the FSAP as a package within a strict timetable;
    - The use of the Lamfalussy Process in the capital markets part of the FSAP: in particular the introduction of new institutions such as CESR and of new consultation practices , the existence of Level 2 (which in some cases, e.g. MiFID, was used for addressing unresolved political decisions), and the prominent role played by the co-decision procedure in shaping the final outcome of legislation in many dossiers; and
    - The rise to prominence of the transparency of the process as a key principle.

14. If future objectives justify a package approach (which we do not currently foresee in the capital markets area but could be the case in other areas or at a different point in time), we believe that the following conditions should be met to reap its full benefits:

    - The policy objectives should be demonstrated to require a wholesome/comprehensive response composed of inter-linked measures;
    - The interactions of the items in the package should be properly considered and the items clearly prioritized;
    - The scope of the package as well as the individual items should benefit from a full RIA, taking into account the full range of legislative and non-legislative options, based on a methodology that is robust and credible, and conducted through an open and thorough consultation with the stakeholders;
    - The timetable for the preparation, adoption and implementation of the package should be set realistically;
    - The scope of the package should be subject to review and corrections as necessitated by new information or developments; and

- A special mechanism, such as the advisory panel once used with the SLIM initiative, should be considered to bring focus on the objective of avoiding unnecessary complications for the package as a whole as well as for the individual items, so that cross-sectoral technical advice (on a purely advisory and open and transparent basis) can help the Commission in aligning its proposals with an optimal combination of measures that overall simplify the regulatory framework, rather than introduce unnecessary complexity.

15. Lessons drawn from this process will be invaluable for any future use of a package as well as for identifying the relative importance of the other factors associated with the FSAP process. We therefore greatly welcome the fact that the Commission is making an effort to identify the key determinants of the outcome and agree to improvements.

III-b) INFLUENCES ON TIMING OF THE ADOPTION OF MEASURES

Lamfalussy Process

- **What is your assessment of the workings of the Lamfalussy structure thus far?**
- **Do you think that the system allows for adequate input from stakeholders?**

16. Our general assessment of the application of the Lamfalussy structure to capital markets is so far quite positive. The implementation of the Process has improved continuously since the start, thanks among others to the continuing process of reviewing and fine-tuning put into place by the Commission (culminating in the 2004 Review) and the periodic reports of the Inter-institutional Monitoring Group. As FESE, we have contributed to both processes and are happy to see that many of our suggestions for improvements have been taken on board.

17. While not all of the advantages expected from the process can be tested at the current point in time, we believe that one can already identify the following areas where the experience with the Lamfalussy process has been positive so far:

    - Greater involvement of market expertise via more structured consultations and use of expert groups;
    - Clearer primary legislation in the form of Level 1 text (with fewer loopholes and ambiguities); and
    - Potential (albeit untested) possibility to bring legislation up to date (or rectify problems identified during implementation) via use of the Level 2.

18. On the other hand, we believe that the results of the process exhibited the following problems:

    - Excessive detail and ambiguous language in some cases;
    - Lack of structured cost-benefit analysis of the full range of policy options prior to proposing Level 1 measures;
    - Occasional gaps in the transparency of the legislative procedure (for example with regard to the sometimes substantial changes proposed by the Council); and
    - Excessive focus on deadlines and timing, and not enough focus on quality.

19. Generally speaking, we see these problems as extraneous to the process itself and consider that they have prevented us from realising the full potential of the process.

20. As far as input from stakeholders is concerned, we believe that the consultation processes have tangibly improved (form example by setting of benchmarks for good consultation by CESR or the IIMG), even though further improvements need to be made. (Please see our remarks on Consultation below).

21. We would also like to note the higher incidence of CESR advice being rejected by the Commission than one might have expected. As at Level 1, we fully recognise and support the respective roles of CESR, which produces technical advice, and the Commission, which, in exercise of it sole right of initiating policy, utilises such advice by balancing the different interests of the market participants and the wider EU economy. However, if important elements of CESR's advice are consistently set aside without an adequate explanation for the reasons for doing so, this approach risks thwarting the very rationale of the Lamfalussy process by ignoring the contribution made at the advisory committee level and could lead to a waste of resources, loss of institutional motivation, and confusion regarding the usefulness of the consultation process. At the same time, it is worth noting that in many cases, the Commission's solutions were better and less detailed, enabling easier consensus during the informal ESC discussions.

22. To counter such problem, there needs to be a greater clarity in terms of the distinction between the technical issues to be determined by CESR and the policy choices to be made by the Commission. On those issues where the Commission sees a range of technical options, it might be helpful for the Commission to request CESR to provide information on the relative costs and benefits expected from the different policy choices at hand.

23. In our view, this part of the process could be improved as follows:

    - The choices to be made among the technical options offered by CESR should be made in a transparent way that involves good consultation (in this sense we fully support the established practice of the Commission consultations before the submission of level 2 measure drafts to the ESC);
    - The dialogue between the Commission and CESR should be streamlined;
    - CESR should seek to rely on the conclusions of its working groups to the maximum extent possible;
    - The Commission should provide CESR with clearer and quicker terms of reference focussed on the technical issues and ensure an adequate timeframe for this work;
    - CESR should strictly limit its work on the terms of reference, but also recognise explicitly if there are other technical solutions than the one it is recommending which the Commission may wish to consider;
    - On important issues, the Commission should provide a fuller explanation of the reasons why it has chosen not to make use of CESR's advice.

24. Finally, the success of the process will greatly depend on the effectiveness of Level 3 and Level 4. This will depend in turn on sufficient resources being made available, especially with respect to Level 4. We believe that the Commission's chosen approach of 'dynamic consolidation' as outlined in the White Paper would work only if Level 3 and Level 4 are fully functional.

25. Looking back at the late transposition of MAD and Prospectus Directive and the delayed transposition and implementation of MiFID (which, under the circumstances, we fully support), we see that in the future the timetable set for the transposition process will have to be carefully considered. We also urge the Commission to consider the implications of delayed transposition that might become particularly complicated in the case of mixed legal instruments (e.g. when Level 1 is a Directive and not yet transposed and Level 2 is a Regulation). The transposition process has to provide legal

certainty to the industry while providing incentives for timely and accurate transposition. The timing in particular needs to be based on a realistic appreciation of the time needed by industry/governments to adapt to the new legal framework (and include the time needed for the national parliamentary processes to adjust the national legal framework where needed).

Consultation

- **What has your perception been of the volume of consultation involved in the elaboration of FSAP measures? (Please include here consultation exercises carried out by the Level 3 committees prior to providing advice to the Commission).**
- **Have consultation exercises been specific enough in their focus for your area of interest/ business/ expertise?**
- **What is your view on the potential benefit of consumer input to consultation exercises?**
- **Would you be willing to make yourself available for involvement in forum groups/working parties/ advisory panels on future policy developments?**

26. As it is by now well accepted that the consultation practices for both the Prospectus and Market Abuse Directive level 1 drafts were deficient, we see no need to dwell on them here. At the same time, we wish to express our appreciation for the fact that the Commission has acknowledged these deficiencies in the current document, and sought to improve them. More importantly, at the time of the adoption of the Prospectus Directive, the steps taken by the Commission – in particular the close working relationship established with the industry and the Parliament and Member States - positively contributed to the improvements made to the original draft. The inclusiveness and openness of the Commission during the legislative process to some extent made up for the deficiencies in the earlier stages of the process. The relatively small range of changes after the revised draft was adopted reflects to some extent the fact that significant concerns of the market and the Parliament and Member States had been taken into account already in that Draft.

27. As for MiFID, the Level 1 consultation was widely acclaimed to be very satisfactory at the time it took place. Like many other market participants, we also credit that consultation with reducing a very complex range of issues to a few remaining problems that were then debated at the last stage before the draft was adopted. Of course, by the standards of today's "Better regulation" agenda, the consultation for MiFID was probably not yet optimal: the relative pros and cons of the various options were not yet laid out in a very structured manner. However, this process coincided with the very first time such a complex package was submitted to consultation and we consider that the way it was conducted paved the way for the higher standards of today.

28. As a general principle, we believe that any major changes made to a proposal of the Commission not fully addressed at the stage of pre-legislative regulatory impact assessment has the potential of influencing the outcome of the legislation and should therefore be subjected to an open and transparent process of discussion that allows for enough time for all parties to react to and assess these changes. To this effect we support proposals to strengthen the transparency of the amendments introduced by the co-legislators. However, this does not mean that a full RIA should be conducted at every stage of the process – this would be very time consuming and inefficient and could effectively block the legislative process. Moreover, each institution in the co-decision process needs to be given a proper chance to fulfil its respective role in the democratic process. Thus a more pragmatic way of ensuring this result would be through the Commission including in the scope of its *ex ante* RIA the relative effects of the full range of options available so as to form the basis of a discussion during the political phase.

III-c) LEGISLATIVE PROCEDURES

- **What is your impression of the use of directives versus regulations? Has the introduction of the Lamfalussy structure improved the application of directives in the Member States?**
- **Have you been affected by amendments to proposals made by the European Parliament or Council? What impact do you think these amendments have had on the effectiveness of the adopted measure?**

29. First of all, we would like to underline the fact that any choice between legislative measures should be preceded by a consideration of the non-legislative measures that are available – such as recommendations and "best practice" or self-regulation options. This process should take into consideration the suitability of the instrument to the objective at hand, in particular whether the goal of achieving a level playing field necessitates the binding nature of a legislative instrument.

30. As far as the choice between Regulations and Directives are concerned, we see advantages and disadvantages associated with each instrument depending on the case at hand and therefore tend to believe that the decision should be taken on a case-by-case basis. While this kind of assessment can only be made once the major outlines of a proposal are in place, it would be helpful for meeting implementation deadlines if clear and early guidance were given as to the choice of instrument. We believe that this discussion should take place as soon as possible in the process. In particular, the serious deficiencies in translation quality – together with the fact that translation choices can have significant effects - render it very important to receive precise, rapid and practicable guidance from the Commission. To date, this has not been as forthcoming as one would have hoped for.

31. While we have some experience with the use of either instrument at Level 2 (Prospectus Directive and MAD), this experience is too new to be the basis of a judgment regarding the relative effectiveness of the instruments and can only serve as the basis of tentative observations of an unfolding process. Although we share the Commission's belief that consistent implementation could be easier to achieve with a Regulation, we also see some disadvantages.

32. To start with, a Regulation may not serve the "educational purpose" involved in the local transposition of EU legislation, which allows the local regulators and governments to consider in detail the changes brought on by the new EU legislation. For example, some of our members report that it is more difficult to receive a local interpretation of a Commission Regulation than it is for a Directive (although this could be addressed through the transposition workshops planned by the Commission as part of Level 4). Separately, and precisely because of its direct effect, there can also be ambiguities in a Regulation and/or it may require more negotiation and thus lead to a more protracted political process. Moreover, the implementation of a Regulation may not be as smooth as a Directive in those cases where local law has to be adjusted. This is particularly the case when the regulation touches on local civil and contract law.

33. In addition, if the Level 1 instrument is a Directive and the Level 2 instrument a Regulation, there might be inconsistencies in the legal application of the overall regime that could lead to unexpected delays. In particular, we would like to stress the need for clarity as regards the transposition of Level 1 and Level 2 legislation at the national level: for example, there is no certainty as to whether a Level 2 Regulation is to be considered as "entered into force" in a Member State when the Level 1 Directive has not been transposed into the national law of that Member State yet.

34. As we have stated above, we think that the extensive amendments adopted by the Parliament in the First reading of the Prospectus Directive – necessitated, as discussed above, by the lack of initial

consultation - were overall very positive and in line with the needs of the various stakeholders and above all the need of the EU investors and issuers. As with most Parliament processes, these changes were adopted in a transparent fashion and the openness of the process contributed to the quality of the amendments. Considering also the other legislation submitted to co-decision, we see the role of the Parliament in the process as very important in ensuring the quality, relevance and proportionality of EU legislation.

III-d) QUALITATIVE ASSESSMENTS OF FSAP PROCESS

- **What is your assessment of the balance reached between the quantity and quality of the measures adopted?**
- **What is your assessment of the appropriateness of the adopted measures compared to the initial proposals?**

35. Our assessment of the balance between quantity and quality produced by the FSAP process needs to be tentative by definition as the underlying quality of the measures can only be determined once implementation is completed. We consider it an achievement that all of the most important measures that were part of the FSAP have been adopted. While we recognise the role of the deadlines in maintaining the political momentum, the positive results may have been possible to attain even with a slight slippage of time where the substance of the measures necessitated it. We therefore think that quality should always take precedence over speed.

36. In particular, we think that the unrealistic timetables have put the Level 2 work for MiFID under pressure. Constrained consultation periods took a toll on the time made available to the market participants to prepare their input.

37. Another casualty of the emphasis on timetable has been the lack of consideration of the position of third country issuers. We believe that more thought should be given to ensuring flexible and workable arrangements for non-EU issuers. We are also concerned about the possibility of knee-jerk legislative reactions to external events. The dangers of this approach are graphically illustrated by the Sarbanes-Oxley Act, which has had a detrimental impact on the international attractiveness of US markets. It is vital that the EU does not repeat this mistake.

III-e) TRANSPOSITION OF FSAP MEASURES

- **Can you recommend any further practical steps that could encourage greater compliance with the requirement to transpose and implement legislation in the Member States?**

38. We support the steps proposed by the Commission, in particular that the launch of a closer working relationship between the Commission and the Member States to ensure accurate and timely transposition.

39. As we have indicated above, we believe that problems encountered so far show that the transposition timetables need to be set more realistically in the future.

40. In addition, we would like to propose new mechanisms to directly involve market input in assessing and improving transposition of EU legislation. This could take a variety of forms, from regular workshops with stakeholders to discuss experience with the transposition to an alternative mediation/ombudsman mechanism as outlined in our response to CESR's recent consultation on the subject.

41. Another important tool to improve transposition is to provide additional incentives to Member States for timely and accurate transposition. Apart from the already existing transposition tables, the

Commission could also consider employing additional mechanisms, such as conferring to the best performers priority places in certain events.

42. Finally, we consider that the success of transposition depends ultimately on the legislation itself. While the Lamfalussy process has already improved the clarity of legislation in a way that will make consistent implementation more likely, it is useful to stress that the impact of the wording of legislation on the transposition should take centre stage throughout the co-decision procedure. In this sense, we can identify the following points that need further consideration:

- The impact of recitals in Level 1 or Level 2 legislation on transposition;
- Presence of wording that allows uneven implementation (e.g. waivers or exceptions);
- The role played by translation in ensuring consistent EU-wide implementation;
- Uncertainties regarding the designation of the competent authority (this has become a problem particularly in the context of the Market Abuse Directive where multiple authorities are assigned to supervision of the same entity).

IV. Comments on the Recommendations

43. We note that the Commission's document includes a list of recommendations at the end. Many of the comments we have made above relate to the recommendations and will therefore not be repeated here. However, for the sake of completeness, we would like to comment here especially on those recommendations which address subjects not explicitly picked up above in the Questions section and propose alternative wording where appropriate.

44. With regard to Recommendation 1, we find it important to stress that the deadlines need to be realistic and the identification of the objectives should happen with full transparency, and that this principle should be applied to all cases. Thus, we suggest the following wording:

    Recommendation 1: When drawing up policy programmes, ensure that the measures contained therein are prioritized appropriately and are always subject to strict and realistic deadlines and basic principles and objectives which are politically agreed as widely as possible by European Parliament / Council and implicitly explicitly and under consultation supported by the industry and users. Strong monitoring mechanisms are required.

45. With regard to Recommendation 2, we wish to include the consideration of non-legislative options in the consultation process and also highlight the importance of an early technical discussion on the line between Level 1 and Level 2 rules. Thus we would change the wording as follows:

    Recommendation 2: Continue to apply the Lamfalussy approach to the elaboration of financial services legislation, giving due regard to appropriate timeframes for transposition and consultation at all 4 levels and appropriate calibration between the different levels and giving due regard to non-legislative options. Level 1 and Level 2 need to be calibrated carefully with the help of input from the stakeholders at an early stage; the consultation at the pre-legislative stage should focus on not only the content of the proposed rules but also the appropriateness of the delineation between Level 1 and Level 2.

46. With regard to Recommendation 3, we are not sure what is meant by "the practical constraints of the exercise". One way of clarifying it might be as follows:

    Recommendation 3: Continue to consult widely before and during the introduction of new legislative proposals, in accordance with the Commission's "better regulation" policy, allowing for the time and resources required to enable the exercise to identify the best options available to achieve the targeted policy objectives, setting realistic timetables, and drawing up feedback statements.

47. We support the objectives of Recommendation 4, which can be improved in the following way:

Recommendation 4: Make the maximum use of the FIN-USE forum; encourage participation from users' organizations in consultation. This should be aimed at involving a diverse range of institutions, including the representatives of not only direct retail investors but also those whose savings are channelled via intermediation. The methods chosen should ensure that all relevant stakeholders are involved in a framework that is transparent to all and that the resulting framework is appropriately tailored to the needs of participants in different market segments, with due attention to the differences in retail and wholesale markets.

48. With regard to Recommendation 5, we think it is important to underline the principle that the policy reactions to "unexpected events" (for example corporate scandals) should also be measured to avoid knee-jerk reactions that in the long run undermine the objectives of stability and transparency. Also the principle of Level 2 flowing from Level 1 merits being reiterated here. Thus we suggest the following additions:

Recommendation 5: Make full use of the flexibility of the Lamfalussy process in providing adequate legislative responses to unexpected external events. This can be done via Level 2 where Level 1 allows it but needs to take place with due consideration of the structural problems that need to be addressed so that the policy reactions do not undermine the long-term stability and transparency of the system.

49. With regard to Recommendation 6, we wish to reiterate our belief in a case-by-case analysis as outlined in Section III-c.

50. We have no additional comments on Recommendation 7 and 8 (except in so far as we repeat our comments with regard to Recommendation 5).

51. We have no additional comments on Recommendation 9.

52. We refer to our comments on the package approach in relation to Recommendation 10.

53. With regard to Recommendation 11, we find it important to underline that additional mechanisms that involve the market should be considered (while acknowledging that the Commission only plays a limited role in the national transposition process), and thus make the following suggestion:

Recommendation 11: Continue and extend the practice of offering transposition workshops and technical assistance to Member States in order to facilitate transposition. A variety of mechanisms should be considered to involve market input in the assessment and improvement of transposition at national level.

V. Conclusion

54. As the preceding remarks demonstrate, we find the Commission's consultation on the process used in the FSAP very useful and timely. While our judgements on the substantial achievements of the process have to be left to Phase II of the evaluation, a number of important observations can already be made regarding the process at the current time. To highlight only a number of the observations we have focussed on in this response:

    - The **package approach** can be useful in the future if designed with greater focus on coherence, prioritisation and assessment of the appropriateness of each measure, although we do not believe there is a need for its use in the foreseeable future;

- Despite external setbacks, the **Lamfalussy process** has resulted in concrete benefits already (e.g. in the form of greater clarity of legislation and greater use of market expertise) and must be continued to achieve its full potential;
- **Consultation processes** used during the FSAP showed constant improvement through an increasingly structured and comprehensive approach, but suffered from occasional gaps in the transparency of the co-decision procedure; future improvements are essential in the area of the transparency of the amendments through extensive ex ante RIAs including the relevant policy options and better planning of the time and resources needed for consultation;
- The goal of **consistent, accurate and timely transposition** merits a careful analysis of the best legal instruments suitable to the specific circumstances of each case, as well as a special attention to the impact of the legislation on transposition;
- We recommend **two new mechanisms** that could involve **the industry** in achieving the objectives of the Commission: first, in assessing the impact of the proposed legislation on the **complexity/simplification** of the regulatory framework (along the lines of the former advisory SLIM initiative); second in assessing and rectifying problems in the **transposition** of EU legislation (along the lined proposed in our response to the CESR consultation on the mediation mechanism).