



EFFAS THE EUROPEAN FEDERATION OF FINANCIAL ANALYSTS SOCIETIES

European Commission
Inter-institutional Monitoring Group

via Email/Internet

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Inter-institutional Monitoring Group Questionnaire for industry

Dear Sir, dear Madam,

EFFAS, the European Federation of Financial Analyst Societies is the European umbrella organisation of national analysts societies. EFFAS comprises 24 national member societies representing more than 14,000 investment professionals mainly financial analysts and asset managers.

A. GENERAL QUESTIONS:

1. The Lamfalussy approach is aimed at creating a new regulatory system which would allow the European legislation to respond rapidly and flexibly to developments in financial markets.

Is it your perception that the Lamfalussy approach has brought greater speed and more flexibility into the process? If so, in what way? If not, what are your suggestions for improvements?

Answer:

a) *Greater speed*

EFFAS cannot comment on practical experience in the improvement of speed in the European legislation process due to the Lamfalussy approach. This is due to the fact that EFFAS has been mainly involved in the consultation process since the introduction of the Lamfalussy approach. However, common sense would indicate that the time requirements for legislation on the European level should not greatly differ under the respective approaches. Whereas the former approach (one level directive) required more time due to the detail questions of the regulation of the respective topic, the time requirements are possibly reduced on level 1 since an agreement on basic principles can be reached more easily than on detail legislation. Any time savings in former directive-legislation was, however, balanced by the time requirements for implementing these directives in national legislation. Under the Lamfalussy process, the total time requirement of European legislation on level 1 and 2 is probably equal to or greater than the former approach because of the multiplication of consultations and hearings. The time-impact on

implementing national legislation depends mainly on whether the directive - or regulation-instrument is chosen on level 2 (see below).

b) More flexibility

EFFAS believes that the Lamfalussy approach has led to a significant increase in flexibility. This is due to the fact that Level 1 legislative acts - enacted by the Council and European Parliament - are conceived to be principle based. They shall create a legislative framework and concentrate on the core political principles. The implementing details released by the European Commission and the European Securities Committee are to be discussed on level 2. By experience we have learned that the participants in the regulatory process find it easier to agree on principles rather than on in-depth issues, which typically interfere more with the national sovereignty of the member states. Therefore, level 2 measures are political and thus more controversially discussed. In splitting up these two steps, the Lamfalussy approach managed to channel that part of the legislation process requiring regular review and updating to a smaller and more flexible unit. It has thus brought more flexibility to the European regulatory system. However, concerns are that regulators got more influence in the legislative process than the market participants.

2. Has the Lamfalussy process improved the quality of legislation?

Answer:

Yes. The Lamfalussy approach forces all participants in legislation to think more about policy principles cast in legislation (level 1) and on the technical implementation of these principles (level 2). This also improves the interpretation and application of such legislation.

3. Have you been affected and/or involved by the Lamfalussy process? If so, in what way?

Answer:

Yes. EFFAS is the European Federation of national societies of financial analysts and other capital market experts. As such, EFFAS participates in the Lamfalussy process of capital markets legislation. EFFAS and its representatives have participated and participate in the consultation process of those legislation projects which affect their members (e.g. Market Abuse, Markets in Financial Instruments, Capital Requirements, UCITS, Security prospectus).

4. Have you perceived any significant changes since the Lamfalussy process has been launched? If so, do you consider them improvements? Please describe your concrete experience.

Answer:

No comments from EFFAS.

5. The Lamfalussy regulatory system distinguishes between Level 1 legislation (framework principles) and Level 2 legislation (technical implementing measures). In practice, there is some uncertainty as to what should be included in the Level 1 framework principles and what should be left to Level 2.

What would be your suggestions to resolve this?

Do you have any concrete examples of excessive detail in Level 1 legislation and/or over-regulation?

Answer:

a) This distinction will be a perennial problem, as a technical implementing measure for one party might be a framework principle for another. However, the provisions regulating the jurisdiction, competence and cooperation of national authorities inter se and the Commission should be included in a level 1 framework, even if they are regulated in great detail. Since these provisions affect national sovereignty, they can hardly be shifted to level 2 legislation.

6. How do you perceive the co-operation between the European Institutions (EP, Council, EC) themselves; between the European Institutions and Level 2 Committees (ESC, EBC, EIOPC); between the European institutions and Level 3 Committees (CESR, CEBS, CEIOPS) as well as between Level 3 Committees themselves?

No comments from EFFAS

7. What bottlenecks have you identified and what would you suggest to improve the process?

No comments by EFFAS

8. Do you see a risk of the Lamfalussy process leading to overregulation (regulatory burden)?

Answer:

No. However, given the large numbers of working groups, as well as working items, and the number of experts involved also from the regulatory side, there might be a danger of regulatory burden if all participants don't keep an eye on that issue.

The legislative process in itself might be more burdensome for the participants in this process. We think, however, that the result of the process in the form of legislation will not be more burdensome. On the contrary, the process gives the opportunity to fine tune or calibrate the legislation to the different needs of the industry (e.g. size, type of business, type of instruments – complex, non-complex, etc.)

9. Is appropriate use now being made of regulatory impact analysis tools? How effective are such analyses and do you have any concrete suggestions for improvement?

No comments by EFFAS

B. CONSULTATION:

1. Consultation and transparency are leitmotifs of the Lamfalussy approach.

Is it your perception that:

a) The consultations are run in an open, transparent and systematic way?

b) The market participants and end-users (issuers and consumers) have been consulted sufficiently within the Lamfalussy framework?

If not, what would be your suggestions?

Answer:

The consultations are run in an open, transparent and systematic way. Market participants are usually consulted sufficiently.

Suggestions:

EFFAS has two suggestions to make:

1. Occasionally, the deadlines for comments on drafts or working papers are very tight. Considering the process of consultation within EFFAS (working draft for comment, circulation to EFFAS national societies, consultation of their members, redrafting) the deadlines in the consultation process should always be set to allow proper internal consultation within the respective associations and federations.

2. The Lamfalussy process provides for advice to of the Commission by the advisory committees (e.g. CESR). CESR consults regularly with market participants within the mandates given to it by the Commission. CESR evaluates the responses given during the consultation and presents its views to the Commission in which, of course, some of the responses of market participants are integrated and others not.

It is not clear whether and how responses which were not accepted and integrated by CESR in their advice are to be made available to the Commission. Therefore, those market participants must repeat their comments and responses in the continuing consultation process with the Commission. This is no futile undertaking because EFFAS has made the experience that the Commission does not necessarily follow CESR's view and incorporates suggestions by market participants which were basically ignored or rejected by CESR. This repetition with in the overall process is an added burden, consuming resources of the market participants. This burden could be avoided by devising a format in which responses are to be given. The format should allow a grouping of responses and easy access by the Commission to those views.

2. Have you been involved in the consultation process? If so, in what capacity?

Answer: Yes. As a professional organisation representing market participants.

3. Does the practical implementation of the Lamfalussy approach allow for adequate transparency and feedback on the use of responses to consultation?

Answer: See under 1

C. IMPLEMENTATION

1. The Lamfalussy structure and in particular the strengthened cooperation between national regulators (Level 3) should improve consistent and equivalent transposition of Level 1 and Level 2 legislation.

Is it your perception that the Lamfalussy process has helped to improve the timing and consistency of the transposition of Community rules? If not, what would be your suggestions to improve the process of transposition?

Answer: Yes.

2. Have you been involved in the process of implementation of Lamfalussy Directives? Please describe your concrete experience.

Answer:

Yes. The members of EFFAS participate in the national consultation processes during the implementation of Directives on the national level, and in the formulation of interpretation rulings or guidelines.

3. The Lamfalussy report recommends the use of Regulations rather than the use of Directives i.a. in order to avoid uneven transposition and different interpretations. Previous IIMG reports tended to uphold this recommendation.

To what extent do you agree with this statement?

Answer:

EFFAS supports this approach. It simplifies the legislation process and fosters the further integration of the capital markets. Different, but equivalent approaches and industry-usages and practices in the different member states can be recognised in regulations by using a second level principle approach setting the minimum standards and referring to those usages and practices.

D.

Are there any other issues you would like to raise in respect to the Lamfalussy process?

No comments by EFFAS

With kind regards,



Fritz H Rau