



DANISH BANKERS ASSOCIATION

Mr. Fabrice Demarigny, Secretary General
CESR

Comments by the Danish Bankers Association on the European Commission's draft mandates for implementing legislation under the Financial Instruments Markets Directive

The Danish Bankers Association welcomes the opportunity to give preliminary comments on the Commission's draft mandate for implementing measures before CESR starts drafting the recommendations for level 2-legislation.

We also welcome the establishment of the Consultative Working Group, which we believe will contribute to the quality of the recommendations.

Level of detail in the level 2-legislation

One of the most important issues as regards level 2-measures in general is the level of detail to be included. It is of most importance that CESR prior to formulating its advice to the Commission thoroughly considers how to strike the right balance between the objective of the directive - i.e. investor protection - and the need of an efficient capital market. With too detailed regulation the Commission merely risks to add undue burdens and unnecessary costs to the firms and thereby hampering the development of an efficient EU-market for financial services.

To accomplish this objective CESR should at a very early stage gather information about how each CESR Member regulates at present and identify key differences in the CESR Members' regulatory regimes. This information should be used to ensure that the implementing measures CESR advises are proportionate, appropriate and relevant to the markets and their users.

We generally believe that too detailed rules should be avoided in areas, which is better left for the market participants to assess appropriate rules themselves.

Furthermore, the implementing measures should not require a comprehensive re-writing of national regulator's existing detailed rules, unless this is strictly necessary.

Determination of priorities

Due to the amount of the level 2-delegations in the Directive on Financial Instruments markets and the experience from other directives under the FSAP on the task of developing the level 2-rules it could be considered to

19 February 2004

Finansrådets Hus
Amaliegade 7
DK-1256 Copenhagen K

Telefon +45 3370 1000
Fax +45 3393 0260

mail@finansraadet.dk
www.finansraadet.dk

Journalnr. 514/09
Dok. nr. 96023-v1

prioritise the implementing measures and on this stage solely deal with those comitology provisions in the Directive which are a condition for the directive to come into force. Then at a later stage the Commission could adopt level 2-measures as regards the comitology provisions, which are permissive.

Page 2

The format of the measure suggested by CESR

Finally, it is very important that CESR carefully considers the legal form of the implementing measures. In this regard we think that the member states should be left some degree of flexibility to adapt their specific requirements to local market structures and legal environments. We would therefore prefer the use of directive as far as possible and only the use of regulation to areas where highest level of harmonized rules are required.

Journalnr. 514/09

Dok. nr. 96023-v1

Kind regards

Sidsel Nordengaard

Direct 3370 1064
sin@finansraadet.dk