

15 November 2002

**PROPOSED EXTENSION OF THE LAMFALUSSY PROCEDURE TO THE
BANKING AND INSURANCE SECTORS**

UNICE POSITION

When the recommendations contained in the so-called 'Lamfalussy report' were first implemented, UNICE welcomed them as "a right step at the right time", as the new procedure is designed to assure a speedier legislative process in the financial markets area that reflects the constantly evolving needs of the market and is based on extensive consultations by all market participants. Therefore, UNICE has also always welcomed the idea of its extension to other areas.

However, the Lamfalussy procedure as it is conducted at the moment must be considered to be only in its trial and development stage. There is considerable room for improvement as regards the consultation process. Market participants and, in particular, business as essential user of financial services ought to be consulted more smoothly and efficiently than is the case at the moment.

Therefore, UNICE can only give a full support of an extension of the Lamfalussy procedure to the banking and insurance sector, if the following improvements in the process are made:

UNICE's Recommendations for improvement:

- **Article 202 should be amended** in the next Inter-governmental conference in order to give the European Parliament the effective right to revoke and veto the standards drawn up by the Committees. The non-binding statement proposed is not enough to meet democratic requirements.
- A key component of the recommendations of the Lamfalussy Report is to **closely involve and consult industry** at all stages of the Lamfalussy procedure. The following consultation procedures should be respected for the existing as well as for the future areas in which the Lamfalussy procedure is and will be applied:
 - At level 1 there should be at least one round of consultation **before the proposal is formally made public by the Commission**.
 - The level 2 consulting committee should only be involved once the **framework directive is close to being finalised**. This was not the case with either the Market Abuse or the Prospectus Directive. If this timetable is not respected, it cannot be ascertained that the detailed standards are compatible with superior legal norms.
 - **At level 2 there should be at least one round of consultation** with market participants before the CESR committee gives technical advice on level 2 implementing measures to the Commission.

- **At Level 2 there should be a round of consultation with market participants on draft level 2 rules** prepared by the Commission before they are submitted to the ESC committee to be voted and passed on to the Commission for adoption.
 - **At level 3 there should be consultation with market participants** on any proposed level 3 standards, guidance or similar level 3 measures **before they are completed by the CESR committee.**
 - **Adequate consultation periods** should be built into the process to ensure that consultation with the industry is not overly hurried – the precise length of consultation periods may vary depending upon the significance and complexity of the measures envisaged, but as a general rule the time frame should be at least three months.
- The overall **transparency** of the process should be enhanced.
 - Documents by the regulation committees should be made available to the public in **electronic form.**
 - The **references** made in the Consultation Papers (i.e. an example taken from the law of a particular country) should be **better explained.**
 - It is helpful **to have published** not merely the responses to the consultation but also the reasoning as to **why some responses are accepted and some rejected.**
 - The **agendas and minutes** of CESR meetings should be publicly available with only well-founded exceptions.
 - It is important that the CESR committee undertakes adequate research and analysis work, including proper impact assessment with cost/benefit analyses. It should therefore be ensured that **CESR will be properly resourced** before giving it additional responsibilities.
 - Better **consistency of definitions** among all directives is essential. Definitions (e.g. that of SMEs) ought not to differ from one Financial Services Directive to the other.
 - In the legislative procedure it is essential to **take into account global regulatory issues** in order to ensure the competitiveness of the EU companies.
 - Finally, UNICE welcomes the establishment of a **Market Participants Advisory Committee** as part of the consultation process. However, it should not only be limited to representatives of financial service providers, investors and shareholder groups but should also include representatives of user groups such as business organisations.