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

1. Objectives and political orientation

The Czech Republic supports the overall objectives and main political orientation of the European Commission as outlined in the Green Paper in the area of financial services over the next five years. We believe, that these objectives together with the other crucial horizontal politics in the area of corporate governance, commercial law, accounting and auditing etc. may contribute significantly to the integration of the European financial services market. We regard the enforcement of these objectives as one of the essential prerequisites in the fulfillment of the Lisbon strategy.

2. Better regulation, transposition, enforcement and evaluation

The Czech Republic supports Commission’s priorities in the area of better regulation, transposition, enforcement and continuous evaluation. A thorough consultation mechanism is an essential prerequisite for a better output. However, it is important that the market participants are given enough time to prepare their reactions. Consultations on the implementation of European legislations should continue not only at the regulators level but also on that of the supervisory authorities, which should then also take into account their practices. The simplification of Directives is only to be encouraged. The clearer and more comprehensible the text, the easier the
implementation and also the need for explanation by the European Commission will be and therefore the comparison of transposition into the national regulations will be simpler. The Directives should be unambiguous and without a number of possible “national discretions”. As long as the Directives fulfil these conditions there will be fewer differences in their implementation into national legislations. A greater use of Regulations in this regard would help in a more effective implementation. The Czech Republic supports the carrying out of regulatory impact assessments. However, it is necessary to note that at present, a generally accepted methodology for the carrying out of impact assessments in the area of the regulation of financial services does not exist, partly as a result of the extremely difficult quantification of the advantages of regulation such as, for instance, securing financial stability, investor confidence and innovative steps taken by financial companies.

As far as transposition is concerned the introduction of clear and detailed transposition tables in one of the EU languages, which will be reviewed by the European Commission and will be linked by references to the national regulations is suggested. In this case it is necessary to warn against an over zealous bureaucracy, which could spin out of the proposal and which could bring further costs for the supervisors and also the European Commission. We think that this part of the Paper should also contain the task of achieving the same (comparable) legislative requirements across the financial sectors in the common areas and others where this can be achieved: licencing, granting approvals with qualifying holdings in financial institutions, internal control systems, risk management etc. These conditions could be included in a single Directive that is valid for all regulated financial institutions. Even though the unification of regulation condition is implicit in the text of the Paper, we think that it should be expressed at this point and explicitly.

Commission Workshops with the Member States concerning transposition are very welcome. In this regard another task arises, how to secure a single interpretation for the transposition of unified reporting (capital adequacy, financial statements...), which will be introduced with the new Basel II concept in banks and investment firms. It is not possible to assume that the description of the reported item will be so detailed as to rule out a variable interpretation and also situations will most certainly arise in practice, which should, from the point of view of reporting be resolved in a like manner.

The European Commission assumes a consistent transposition and enforcement of European legislature and in this regard it states that it will continue in its reporting on financial integration, effectiveness of integration and the connected financial stability on a yearly basis. In connection with this it is necessary to say that the European Central Bank formulates a range of analyses and reports through its committees. The European Commission should make use of these and avoid doing the same work twice. For instance, the European Commission could propose the ECB the topics for carrying out analyses in its area of interest, and these would then serve for the evaluation of progress in the integration of the financial markets in the EU.
In the area of simplification of legislative framework we consider as very important to enable market participants to be more involved in pointing at inconsistencies of legal rules. We consider the systematic ex-post evaluation of application of rules in practice is an important tool for enhancement of the rules and also for regulatory and supervisory practice.

3. Regulatory and supervisory framework

The Czech Republic regards the current regulatory and supervisory framework as quite adequate for resolving any future challenges that may arise for the supervisory authorities. In terms of the legislative process it is important that in the future, the framework directives do not contain particularly detailed legal provisions and that it is possible to react in a timely and speedy manner to any changes in the market conditions and errors in the existing legal rules.

In the area of supervision the Czech Republic considers the effort of raising the level of mutual confidence between supervisory authorities through a sounder co-operation, to be a priority. We do not agree with the introduction of something like a super-regulator, but merely with the convergence of supervisory practices and the more effective co-operation and information and know-how exchange between the supervisory authorities. We support the kind of supervisory structure that will not bring further unnecessarily high costs for companies. In this regard we consider that the supervisory authorities have the necessary supervisory tools at their disposal and now it is time, rather than thinking up more and more new tools, to effectively use those that we have and at the same time cultivate, through the European supervisory structures, a high quality “supervisory culture” and foster a greater level of confidence between national supervisory authorities. It is important to note that regulatory tools used should correspond to the stage of convergence and integration of financial markets. An adaptive and forward looking supervisory strategy based on the proper assessment of the markets should ensure appropriate investor protection and maintaining fair, competitive and secure financial markets.

Control by a home supervisory authority should not be proclaimed in the Paper as the main concept of supervision in Europe, when at the same time it is said, that extending the tasks of home supervision beyond those which are stated in the proposed CRD, can only be carried out after the related issues have been resolved (emergency liquidity issues, legal responsibility for undertaking the supervision, responsibility for the resolution of crises, deposit-guarantee schemes and other issues). The proposition therefore, should rather state that any areas that prevent the development of the concept of a home supervisory structure would be analysed and resolved.
4. Consolidation of financial services legislation

The Czech Republic agrees with the European Commission’s policy of finishing the remaining FSAP measures. We support the steps taken by the European Commission in the area of maintaining a competitive environment and we welcome an even closer process of co-operation of the DG Internal Market with the DG Competition in the future. In terms of a global regulatory dialogue it is necessary to set the activities to encompass the broadest possible harmonisation of international accounting standards and overall to try and find such solutions that do not unnecessarily burden companies. We also consider as important the strengthening and deepening of dialogue with the Asian countries, especially China and India because of the more rapid development of their economies and subsequently even their financial systems in the next few years.

Of particular concern is the coordination of activities of ECB and the Commission in the area of data reporting which affect both regulatory agencies and market participants. Finally, a clear regulatory approach to auditors would be welcomed.

5. Possible, targeted new initiatives

The Czech Republic agrees with the possible new initiatives as outlined in the Green Paper. As far as the concept of the 26th regime concerns, it is very difficult at this stage to assess which business case is most appropriate for the application. We support further analysis of this concept by the European Commission and understand that this concept will be proposed on a case by case scenario. Foremost, currently it would be inconsistent with regard to the above-mentioned principle that the existing supervisory framework and tools, e.g. the mutual recognition principal, should be fully exploited before new far-reaching approaches are introduced.

Financial literacy is definitely one of the possible channels in enabling the consumer to better understand financial products. However, it is necessary to cultivate this education from an early age, already using simple concepts at primary school level. Education should be under the control of the individual Member States. The European Commission would then monitor, evaluate and recommend the best practices. It is not necessary to have European-wide programs because it is important to take into account the varying levels of development of the financial systems of the individual Member States. The European Commission should place more emphasis on the protection of the consumers in the new Member States of the European Union, where the knowledge about financial products and the level of development of the financial markets is lower.

UCITS legislation should be thoroughly reviewed to ensure that the full potential of the industry is fully exploited within the EU (e.g. unnecessary barriers or disproportional requirements are removed), though any potential actions must be carefully assessed with regards to their impact on the market and to related costs.
Steps might be taken to further enhance cross-border retail financial services. As the diversity in the sector is rather extensive across the Member States as the retail market will remain, in principle, fragmented, any suggested actions must be carefully assessed with regards to the nature of possible barriers and to the impact on market participants and real benefits for consumers. In fact, national markets and their participants behave in various manners due to the diversity of non-economic conditions, such as cultural, social or psychological factors, which mostly remain country-specific, constituting barriers out of the reach of the outlined financial services policy.