

Mr. A. Docters van Leeuwen
Chairman
CESR
11-13 Avenue de Friedland
75008 Paris
France

BY E-MAIL

Date 4 February 2005

Your ref.

Our ref. \276\20232217\Position Papers\b016-
276(himalaya).doc

Re. CESR preliminary progress report "Which supervisory tools for the EU securities markets?"

Dear Mr. Docters van Leeuwen,

Ealic, the European Association for Listed Companies, aims to represent European listed companies and to promote their common interests on the European level. Ealic was incorporated in December 2002 as a non-profit association. Its membership is growing. Presently sixty-five public companies are member. A membership list is attached for your convenience.

Ealic welcomes the CESR preliminary progress report "Which supervisory tools for the EU securities markets?" (the "**Report**") as a contribution to the creation of an efficient EU single market for financial services. Ealic members share the same objectives as CESR of having in place fair, transparent and secure capital markets to raise capital at reasonable costs. CESR is playing a central role in the integration of financial markets and harmonization of rules and Ealic highly appreciates the transparency in the consultation process, the deep analytical content of the recent papers and the use of permanent consultative groups composed of representatives of market participants.

Ealic concurs with the "adaptive" strategy for securities regulators and CESR as set forth in the Report, which strategy may lead to modification (to the extent necessary) of rules and supervisory structures in the European financial markets. Ealic is pleased to submit its comments regarding the Report, in particular with respect to the integration of securities markets, the challenges for regulatory structures and the implementation process.

(i) General remarks

Financial markets have significantly developed in the last decades throughout industrialized countries. The process of financial integration followed quite heterogeneous paths as analysed in the Report, which focuses mainly on securities markets. Ealic considers that particular attention should be given to the relevant integration between the banking and insurance market on one hand and the securities markets on the other hand. In most countries, banks and insurance companies are among the most important issuers of stocks and other securities traded in both organized exchanges and over the counter. Moreover, they are often important shareholders of the exchanges.

Financial products and instruments have also experienced a certain degree of integration, sometimes altering their original economic function. In general, financial products have become increasingly complex, calling for new and enhanced instruments in regulatory and supervisory activities. Furthermore, the European Monetary Union and then the adoption of the Euro increased the level of substitutability between national government and corporate bonds, given the vanishing differences in interest rates across member countries. The Euro is also impacting the demand side of the stock-exchanges' business, by making them quasi perfect substitutes. We have already observed consolidation (or attempts) among market infrastructures, more on the trading side than on the post-trading one. The development of internet as a distribution channel for financial services and the great advances in technology allowing remote membership to securities markets is contributing to render the location of the financial firms irrelevant. There are increasing dual and cross-border offerings and listings of securities. The recent directives contained in FSAP will allow the admission to trading of issuers on regulated markets even without their consent. The flow of liquidity will be dispersed also on multilateral trading facilities and internalisers. The way of effective functioning of the consolidation of pre- and post-trade data on prices will affect the evolution of the securities industry. Therefore, Ealic considers that a greater role of CESR in the field may be necessary, as well with regard to corporate information flows resulting from the Transparency Directive.

The aforementioned developments create new regulatory and supervisory challenges which are addressed by the recent directives. Ealic considers that all Level 1, 2 and 3 measures should be operational at the national level in order to be fully able to evaluate their effectiveness of the legal integration.

(ii) The network of securities regulators and the role of CESR

Ealic supports the analysis contained in the Report regarding the challenges and improvements of the network of securities regulators and the role of CESR. In recent years we have witnessed a strong evolution in the architecture of financial regulators. Regulatory and supervisory arrangements of the European financial system have been

either modified or are currently the object of a lively national debate. In Europe, the responsibility for monetary policy in the Euro zone has been assigned to the European Central Bank, while banking and financial supervision tasks have been left to domestic agencies. The abandonment of the coincidence between the area of jurisdiction of monetary policy and the area of jurisdiction of banking supervision was a relevant novelty in the Euro area: it creates a “double separation” (geographical and functional) between central banking and banking supervision.

The Report questions the level of convergence in supervisory approaches by the different national authorities and the level of reliance among them. While they are certainly improving, the different regulatory architectures at the national level do not aid the process. The Lamfalussy report analyzed the different regulatory bodies in securities markets (*“Competences are mixed. Responsibilities are different. The result at European level is fragmentation and often confusion”*, p.13), asking for more convergent regulatory and supervisory structures. It appears that more difficulties arise in having a common monetary policy and aiming at a more integrated financial system in the Euro area while keeping different financial regulations and supervisory rules in each Member State. As a matter of fact, these institutional differences may be an important barrier to further financial integration and could as well prove to be an impeding factor to smoother transmission of the single monetary policy.

In the field of financial regulation, the principle of minimum harmonization and mutual recognition, that was originally thought to be able to naturally induce over time a convergence of regulatory behaviour and more uniform rules, was a necessary but not sufficient condition. The organizational structure of European financial groups, using subsidiaries rather than branches, shows that they are not able to fully exploit the advantages of the single passport through branches. Home country rules, especially in the field of investor protection, are significantly different. Moreover, there is a concrete risk that competition in the regulatory area will not even generate the most efficient outcome: on one side, there may exist an incentive to promote less demanding domestic financial regulations and supervision in order to become more attractive for foreign financial business while on the other side it is not clear who will pay the costs of potential insolvency following excessive risk taking behaviour and financial misconduct in a Member State. Finally, with increasing international cross-border activities and, perhaps, pan-European trading and post-trading systems in place, the argument that domestic regulators and supervisors have better knowledge and can exercise more efficient control becomes day by day less effective.

(iii) the implementation process

In spite of the difference in the architecture of financial supervision among different Member States, the adoption of the Lamfalussy process to approve the last financial directives, the use of regulations for level 2 measures and the recommendations of the EU Commission on the implementation process should lead to a greater harmonization

EALIC

among Member States. In order to achieve this result, the implementation process should be carefully monitored. Implementation of Directives (level 1 and 2) approved under the Lamfalussy procedures should be easy in theory and lead to harmonized legislation, as national Parliaments and regulators should base implementation exclusively on the directives. Ealic would like to underline the importance of monitoring this process, particularly if it takes place ex ante during the process. Realizing ex post that national implementation has not been correct is a waste of time and may require enforcement by European judicial authorities.

Ealic would like to point out that Member States may not always follow the correct implementing procedures, for example in the case of market abuse directives. This is due to different reasons. Firstly, only in some countries an adequate consultation on draft legislative text has been performed, due also to the different interpretation of art. 11 of the Market Abuse Directive. Secondly, the Commission and CESR monitor the implementing process but they receive information only from Member States and competent authorities, which are the authors of the measures possibly different from a correct implementation of the Directive. Finally it is very difficult for national Parliaments and especially market participants to monitor the implementing process cross-country.

Ealic considers that the aforementioned problems should be tackled by the European Commission and CESR. A first step was the publication of the Recommendation on the transposition into national law of Directives affecting the internal market (July 12, 2004) but the Recommendation has not received full attention by many Member States. Further steps may include a strict recommendation stating that the draft national legislative measures, which are necessary to implement a directive, should be subject to an open consultation process. In addition, a market expert group should assist the Commission and the CESR in monitoring national implementation process (possibly using the same consultative working group assisting CESR for the draft level 2 measures). Furthermore, the Commission or the CESR should publish on their web site the draft bills and regulations during the implementation process in each country (or at least updated links to the relevant documents on the web site of national Governments or Parliaments).

(iv) transparency

Ealic would like to emphasize the importance of the Commission issuing convincing feedback explanations upon publishing its level 2 implementing proposals so as to make transparent the way in which it has deviated from CESR technical advice. As regards the use of regulations or directives at level 2, this is in principle a rather flexible choice, made “case-by-case”, which takes into account several elements. Ealic considers that it would be useful to know the criteria that the Commission follows in deciding whether a level 2 measures should become a directive or a regulation. Moreover, Ealic considers that the Commission should indicate in advance what kind of legal instrument is likely be adopted: this information could be contained in the CESR

EALIC

mandate or in the course of the following steps of the consultation. Allowing market participants and CESR to know at an early stage about the envisaged legislative instrument would be beneficial to the consultation process itself and improve it, possibly enabling market participants to save time and resources through a more prompt assessment of legal details.

(v) *integrating regulatory and supervisory activities*

All the issues discussed here lead to the question regarding the utility in having euro- (or Europe-) centralized or decentralized regulation and supervision in order to have financial integration, which issue is only skimmed by the Report. The difficulties linked to keeping regulation and supervision at a national level in a context of increasing financial markets integration and cross-border mergers among banks, securities and insurance firms are obvious. Equally challenging are the projects of fully centralizing at the European level regulatory and supervisory activities, given the current differences in fiscal and commercial codes and accounting practices across member countries.

Ealic considers that a much higher degree of co-ordination in the field of financial regulation and prudential supervision is both desirable and needed in the EU. However, harmonization does not necessarily imply full centralization. It is certainly too early to have only centralized regulator(s) and supervisor(s) in the EU but the positive approach set up by the Lamfalussy report – with centralized regulation with level 1 and level 2 measures – shows that it may be too late for having only national regulators. With the extension of the Lamfalussy procedures to banking and insurance activities, the EU has already in place a sort of “federal system” (similar to the European system of central banks) with some kind of regulatory entities at the centre (ECB, CESR and ESC, banking and insurance Committees, DG Competition) and national agencies with full supervisory and less regulatory powers in each country.

Ealic would be pleased to enter into a further dialogue with CESR regarding this subject matter.

Sincerely,

Paul Cronheim
General Secretary

EALIC

EALIC MEMBERS

Listed Companies

Aegon	Mediobanca
Alcatel	Michelin
Atos Origin	Océ
Akzo Nobel	OPG
Assicurazioni Generali	P & O Nedlloyd
Autostrade	Philips
Banca Nazionale del Lavoro	PSA Peugeot Citroen
BNP Paribas	RAS Riunione Adriatica di Sicurtà
Carbone Lorraine	Reed Elsevier
Carrefour	Royal Dutch Shell
CIR	Saint-Gobain
CSM	Sanofi Synthelabo
DSM	Sanpaolo IMI
Enel	SMI
Eurotunnel	Solvay
Essilor International	Société Générale
Fiat	Stork
Finmeccanica	Telecom Italia
France Telecom	Total Fina Elf
Fortis	UCB
Fugro	Umicore
Grolsch	Unicredito Italiano
Hermès International	Unilever
IHC Caland	Vallourec
Interbrew	Veolia Environnement
Italcementi	Van der Moolen
Kas Bank	Vinci
L'Air Liquide	Vivendi Universal
L'Oreal	VNU
Lafarge	Vopak
Lagardère	Wessanen
LVMH	Wolters Kluwer
Marzotto	

EALIC

Organisations of Listed Companies

- **Association Française des Entreprises Privées – Association des Grandes Entreprises Françaises (AFEP)**
- **Association Nationale des Sociétés par Actions (ANSA)**
- **Assoziane fra le società italiane per azioni (ASSONIME)**
- **Association belge des sociétés cotées (ASBL) - Belgische vereniging van beursgenoteerde vennootschappen (VZW) – (ABSC – BVBV)**
- **Vereniging Effecten Uitgevende Ondernemingen (VEUO)**

EALIC BOARD MEMBERS

Alain Joly, Chairman
President Supervisory Board L'Air Liquide

Morris Tabaksblat, Vice Chairman
Chairman Supervisory Board Reed Elsevier

Gabriele Galateri di Genola, Director
President Mediobanca

Baron Hugo Vandamme, Director
Chairman Roularta and Chairman Kinopolis

Bertrand Collomb, Director
Chairman Lafarge

Rob Pieterse, Director
Former Chairman Management Board Wolters Kluwer

Stefano Micossi, Director
Director General Assonime

Paul Cronheim, General Secretary
Partner De Brauw Blackstone Westbroek

Philippe Bissara, Vice General Secretary
Managing Director ANSA



EALIC LEGAL COMMITTEE MEMBERS

Mr Stephen Cowden
General Counsel and Company Secretary Reed Elsevier

Sjoerd Eisma
General Secretary VEVO

Bernard Field
General Secretary Saint-Gobain

Koen Geens
Partner Eubelius

Philippe Lambrecht
General Secretary Federation of Belgian Enterprises

Carmine di Noia
Head Capital Markets and Listed Companies Division Assonime

Christian Schricke
General Secretary Société Générale

Alexandre Tessier
Director AFEP-AGREF

Albert Verdam
Legal Advisor Royal Philips Electronics

Paul Cronheim
Partner De Brauw Blackstone Westbroek

Philippe Bissara
Managing Director ANSA