FEFSI COMMENTS ON

CESR CONSULTATION PAPER ON THE ROLE OF CESR AT "LEVEL 3" UNDER THE LAMFALUSSY PROCESS

The European investment management industry, represented by FEFSI[1], welcomes the opportunity to respond to CESR's Consultation Paper on its role at Level 3 under the Lamfalussy Process. Ensuring consistent application of EU legislation across Member States is a key issue and its importance has probably been underestimated in the past. FEFSI is convinced that CESR can, and indeed must, play a significant role in this context.

We fully agree with the background analysis and the principles concerning the role of CESR under Level 3, meaning that there are three categories of issues: coordinated implementation of EU law, regulatory convergence and supervisory convergence. We also welcome the comments made by CESR Chairman Arthur Docters van Leeuwen at the Hearing of 11 May where he explained that Level 3 does not originate from the Treaty but from the powers of Member States and that these only include coordination and nothing more. We also recall him underlining that CESR's paper on consultation procedures is also applicable to Level 3. It is of particular importance that the arrangements and mechanisms used to deliver Level 3 are fully transparent and open to comment and scrutiny of market participants.

Such procedures already exist but we are of the opinion that they could be more structured and not only take place at the level of the consultative committees, public consultations or public hearings. European industry bodies should be involved in a more organized way, in particular in the early stages of reflection at the beginning of procedures. This issue becomes even more significant in light of the report on the work of the Commission's Asset Management Expert Group, where in a number of contexts, the group recommends that "*the industry in close cooperation with the European Commission and CESR should …*". However, this can only work if the industry bodies concerned are informed and consulted in an early stage in order to formulate the understanding of the industry as a whole.

Notwithstanding these more general remarks, we also have some comments concerning the details in section 2 of the Consultation Paper:

---

[1] FEFSI, the *Fédération Européenne des Fonds et Sociétés d'Investissement*, represents the interests of the European investment management industry (collective and individual portfolio management). Through its members, the national associations of 19 EU Member States (incl. the Czech Rep., Hungary, Poland & Slovakia), Liechtenstein, Norway, and Switzerland, FEFSI represents some 900 management companies being active in both collective and individual portfolio management and about 41,100 investment funds with EUR4.5 trillion in investment assets. For more information, please visit www.fefsi.org.

Implementation of EU law by CESR members

To make the Single Market really effective, consistent implementation of EU law is key. The European investment management industry is currently experiencing how things can go wrong to the detriment of the Single Market.

The European investment management industry is currently also experiencing that industry bodies – with their watchdog function - have a significant role to play where such implementation problems arise. CESR should recognize this, the industry believes. Most of the current problems with the implementation of the UCITS Directive could easily be solved – and even would not have appeared in the first place – if national regulators would work together.

On the other hand, the experience with the simplified prospectus shows (which under Lamfalussy would, however, have been a Level 2 measure) that even very complex issues can be solved with the help of the industry.

The current problems with the implementation of the UCITS Directive finally deliver proof of evidence that consultation with market participants must take place starting at the earliest stage. If it is left to a later stage in the implementation process there is an obvious risk that legitimate concerns cannot be taken into account by CESR members because the implementation process is already too far advanced.

Regulatory convergence

FEFSI fully agrees with what CESR understands by “bottom up” approach. Common approaches will certainly be helpful and will contribute to the realisation of the Single Market. One example of this identified by FEFSI already some time ago and recognised in the recent report of the Commission’s Expert Group on Asset Management is the case of UCITS registration requirements. As Member States handle this issue very differently from country to country it has become an impediment to cross-border marketing of UCITS instead of facilitating it. Any attempt by FEFSI to encourage national authorities to develop consistent standards for registration requirements and to streamline the registration process have up until now failed.

Simply entering common approaches into the minutes of meetings (which are not published) is not enough. If regulators agree on such common approaches, this has significant impact on all market participants and might end up at national level with administrating acts. Again, transparency and collaboration with the industry would be of the highest importance.

With respect to non-harmonised sectors as well as new services or products, FEFSI believes that CESR should focus on those areas identified by market participants as areas where current rules hinder cross-border business and where a coordinated opinion would help facilitate pan-European activity.

Supervisory convergence

Many problems the European investment management industry experienced with the 1985 UCITS Directive appeared because of lack of common understanding amongst supervisors. This is why supervisory convergence seems to us of the utmost importance and why we can only welcome most of the ideas put forward under this heading, especially the sharing of information on national court cases that progressively establish a EU jurisprudence. They should form one of the top priorities for CESR to get started on (and not seeking new areas of regulation as under "regulatory convergence" above).

The "mediation" role of CESR in cases where two or more members disagree on the validity of the passport will contribute greatly to the strengthening of the mutual recognition principle. Much time can be gained for the industry by avoiding clarification of such disputes by intermediation of the Commission and court procedures. The specific "urgent issues groups" which are meant to provide rapid answers through collecting views of CESR members appears to be a sensible and practical idea that only can be encouraged. The current problems with the implementation of the new UCITS Directive only underline the need for this type of action.

Conclusion

The report on the work of the Commission's Asset Management Expert Group clearly shows that in the field of financial services for retail investors a real Single Market does not yet exist. Much needs to be done and a lot can be achieved by CESR through Level 3 actions. However, to reach acceptable and efficient practices and standards, CESR must involve the industry, market practitioners, as well as the respective European industry bodies.

Steffen Matthias, 2 June 2004