The voice of banking & financial services

BBA RESPONSE TO QUESTIONNAIRE ON CESR ACTIVITY BETWEEN 2001 AND 2007. (CESR 07-460)

The British Bankers' Association is the leading UK banking and financial services trade association and acts on behalf of its members on domestic and international issues. Our 220 members are from 60 different countries and collectively provide the full range of banking and financial services. BBA members represent 95% of the banking assets held in the UK and are active in all EU member states. They operate some 130 million personal accounts, contribute £35bn to the economy, and together make up the world's largest international banking centre.

The BBA welcomes the opportunity to respond to the CESR questionnaire regarding its activities between 2001 and 2007. The questionnaire represents an excellent medium through which we, and our member banks, can express our views regarding point 6 of the Stockholm resolution, and whether or not any aspects of CESR can be improved upon, enabling it to further fulfil its mandated obligation to involve the market more in its activities.

We are of the view that CESR, and the overarching Lamfalussy process, are generally sound. We acknowledge the Lamfalussy process has, to date, been provisional, but we strongly recommend that this framework should be the basis for continuing work on supervisory convergence within the next 5 years.

CESR has been party to many successes over the 6 year period since 2001. Among these achievements was the technical advice offered on; the prospectus directive, Market Abuse Directive (MAD), and the Market in Financial Instruments Directive (MiFID), developing a constructive dialogue with the US securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC), contributing to work on mutual recognition of accounting standards between the EU and the USA, and developing a new approach towards joint working and giving consideration to the supervisory tools needed ("the Himalaya Report").

British Bankers' Association
Pinners Hall
105-108 Old Broad Street
London
EC2N 1EX

T +44 (0)20 7216 8800
F +44 (0)20 7216 8811
E info@bba.org.uk
www.bba.org.uk

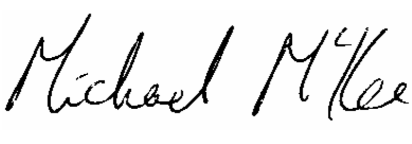
Despite these successes, there are certain changes CESR could introduce to enable it to function more effectively. The workability of certain directives within the Financial Services Action has sometimes not have been at an ideal standard. It seems that political compromise at levels 1 and 2 has been the dominant driving force behind the drafting of certain directives, bringing both technical and implementation problems at level 3. This was echoed by members' comments. They have asked for increased flexibility in the interaction between level 2 and 3 of the Lamfalussy process. Whilst we recognise that CESR already engages with interested parties, we feel the consultation process could be improved by a deeper dialogue between CESR and the industry. It is not sufficient for CESR to just act as conduit for the various national regulators it is comprised of. Despite the technical expertise of CESR, inevitably, situations arise when the knowledge of the market participants is required to solve certain practical problems, and thus, the greater CESR's engagement with industry, the more chance there will be an efficient outcome.

It is also apparent that CESR has yet to find an adequate approach to both the running and funding of projects that contain a large amount of technological support, an example of this being CESR's current development of Transactions Reporting and Exchange Mechanism (TREM).

We are of the belief that CESR's direction should change over the next 5 years, to focus more on achieving supervisory convergence, with the overarching goal being to further develop the European financial system's contribution to the Lisbon strategy. However, there has to be a clear agreement about the objectives of supervisory guidance, and the limits of convergence. There will be situations where different approaches will be acceptable from country to country, or from market to market. CESR has undoubted expertise; however, for CESR to achieve common regulatory outcomes and supervisory work methods, there needs to be a reduction in the level of advice it has had to give on incoming EU legislation. The focus should be on practical projects which will deliver benefits to the market and the regulators. We would also like to see CESR turning its attention to ways in which the efficiency of supervision can be improved, so that the financial services industry within Europe faces neither excessive regulatory burden, nor a restriction of fair competition.

If you would like to discuss this response with us please contact Michael McKee (michael.mckee@bba.org.uk, + 44 207 216 8858), or Christopher Ford (christopher.ford@bba.org.uk, + 44 207 216 8895).

Yours Sincerely,



Michael McKee
Executive Director

Date: July 2007
Ref: 07-460

Questionnaire on Assessment of CESR's activities between 2001 and 2007

ASSESSMENT of CESR'S ACTIVITIES BETWEEN 2001 AND 2007

Purpose

Since the establishment of CESR in September of 2001, CESR has delivered all its mandated level 2 advice in the securities field, and has also delivered level 3 measures, standards and recommendations and guidelines. CESR's work is now increasingly focused on level 3 of the Lamfalussy structure and to fostering supervisory convergence in the day-to-day application of financial regulation.

CESR "should have the confidence of the market participants" as set out in point 6 of the Stockholm Resolution. CESR now considers this an opportune time to assess the extent to which that is the case. CESR wants to know how the market rates CESR's performance to date, to see which areas for improvement the market finds and to consider whether the market believes that CESR is appropriately fulfilling its mandated obligation to involve the market in its activities. 2007 is the year in which the evaluation of the Lamfalussy process and its structures is taking place and an important component of such an evaluation is the markets view on CESR. CESR will report on the results of this questionnaire to the EU institutions within the remits of the Lamfalussy evaluation.

For an explanation of what CESR is and does, and an overview of the Lamfalussy system, please see the annex to the Press release.

Key areas of questions

The questionnaire has five sections. For each question you are asked to mark how well you think CESR has performed against a five grade scaling system. Please mark the relevant box with an X. In the event that further explanation of an answer is necessary, there is also room to do so at the end of each section.

Addressees of this questionnaire

The questionnaire is open to everyone who takes an interest in CESR's work and in particular to all market participants including consumer/retail investor representatives.

CESR has endeavoured to keep this questionnaire as short and to the point as possible, and anticipates that it should not take longer then 30 minutes to complete. CESR thanks you in advance for your time and willingness to participate in this important consultation.

Procedure

This questionnaire is open for answers until the 14th of September 2007. All responses should be posted on the CESR web-site function for responding to consultations.
http://www.cesr.eu/index.php?page=consultation&mac=0&id=

All responses will be made public on the CESR-web-site unless the respondent explicitly states that publication should not take place.

FIRSTLY

Please fill out the name of the respondent you represent below.

BRITISH BANKERS' ASSOCIATION

a. Who are you?

Please indicate in which area you are active: (could be more than one):

Banking	X
Insurance, Pension, Asset Management, Institutional investor	
Legal & Accountancy	
Issuers	

Investment Services	
Investor Relations	
Government regulatory & Enforcement	
Regulated markets, Exchanges & Trading systems	
Sovereign Issuers	
Individuals or consumer association	
Credit Rating Agencies	
Press	
Others	

b. Where are you active?

Please indicate your principle area of activity geographically

In one EU/EEA member state only	In two-three EU/EEA member states	In multiple EU/EEA member states	Outside EU, with headquarter, with or without a permanent presence in the EU/EEA
X			

Section I Understanding the role of CESR

This section is meant to assess your understanding of the role of CESR.

1. How clearly do you understand CESR's objectives, (namely the role given to CESR and reflected in the Stockholm resolution, the Commission decision setting up the CESR and the CESR Charter)?

Not at all	Only a little	To a fair amount	Quite well	Very well
				X

2. How clearly do you understand CESR's priorities?

Not at all	Only a little	To a fair amount	Quite well	Very well
			X	

3. How well do you understand the specific role given to CESR in relation to its position in the EU legislative framework?

Not at all	Only a little	To a fair amount	Quite well	Very well
				X

4. How would you assess the influence of CESR in the EU legislative framework?

Very low	Quite low	A fair amount of influence	Quite high	Very high
			X	

5. How well do you understand the function CESR performs in facilitating the day-to-day application of financial regulation in the EU?

Not at all	Not very well	Only a little	Quite well	Very well
			X	

6. How well do you think CESR has been in explaining its objectives (A), role in the EU institutional system (B) and its priorities (C)?

A) CESR's objectives

Not at all	Not very well	Adequately	Quite well	Very well
			X	

B) CESR's role in the EU institutional system

Not at all	Not very well	Adequately	Quite well	Very well
			X	

C) CESR'S priorities

Not at all	Not very well	Adequately	Quite well	Very well
			X	

7. Please provide comments and suggestions for any improvements you may have regarding questions raised in Section I.

Open answer:

Overall, we find that the objectives, priorities and role of CESR within the overarching Lamfalussy process, are quite clear. There has in the past been a feeling from some of our members that the objectives of CESR have been open to influence from its members' national agenda. However, as the trust and familiarity between the different national members of CESR increases, we should see a reduction in the pursuit of these sometimes 'narrow' interests. There have already been signs that this is the case.

Section II Openness, transparency and consultation practices

This section seeks to assess the openness, transparency and quality of CESR and its consultation processes.

8. Would you say that CESR is an open and transparent organisation?

No not at all	Only to a limited extent	To a certain extent	Yes quite open and transparent	Yes fully transparent
			X	

9. How do you think the consultation process of CESR is working overall?

Not working at all	Works only to a limited extent	Works adequately	Works quite well	Works very well
			X	

10. What is your overall assessment of the consultation papers CESR publishes?

Weak quality	Quite weak quality	Acceptable quality	Good quality	Very high standard
		X		

11. What is your assessment of the comprehensibility of the consultation papers CESR publishes in relation to each of the following Directives/Regulation? [1]

Directive/ Regulation	Very poor	Poor	Average	Quite high	Very high
MAD			X		
PD			X		
TD			X		
IFRS			X		
MiFID			X		
UCITS		X			

12. How do you think that your written contributions to consultations are dealt with by CESR?

Poorly	Not very well	Acceptably	Mostly fairly and accurately	Absolutely fairly and accurately
		X		

13. How do you rank the usefulness of the open hearings that CESR holds?

Not useful at all	Limited usefulness	Adequate	Useful	Very useful
	X			

14. What is your assessment of the CESR web page in terms of its usefulness for transparency and openness towards markets participants and consumers/retail investors?

[1] MAD= Market Abuse Directive, PD= Prospectus Directive, TD Transparency Directive, IFRS= International financial Reporting Standards, MiFID = Markets in Financial Instruments Directive, UCITS= Units in Collective Investment in Transferable Securities

Very poor	Poor	Adequate	Good	Very good
			X	

15. How would you describe the change in the nature and level of transparency and openness of the legislative process in the EU's securities sector since the establishment of CESR (i.e. before and after September 2001)?

Less transparent and open	Slightly less transparent and open	There is no difference	More open and transparent	Much more open and transparent
			X	

16. Please provide any other comments you may have regarding questions raised in Section II, regarding openness, transparency and consultation practices?

Open answer:

We believe CESR operates as an open and transparent organisation, and that their consultation process operates reasonable well. Whilst we recognise that CESR already engages with interested parties, we feel the consultation process could be improved by a deeper dialogue between CESR and the industry. It is not sufficient for CESR to simply act as a conduit for the various national regulators it is comprised of. Instead they need to bring solutions to the industry. Despite the technical expertise of CESR, situations inevitably arise when the knowledge of the market participants is required to solve certain practical problems, and thus, the greater CESR's engagement with industry, the greater the chance of an efficient outcome.

Section III Rule making activity

This section of the questionnaire seeks to assess CESR's rule making quality in the course of the last five and a half years.

17. How would you rate the quality of the work CESR has done in relation to each of the Directives/Regulations for which CESR has given advice to the Commission during the last five and a half years, using the parameters A) to C) below?

A) Workability – How would you rate the workability of the rules in the sense of fit for their practical purposes in their day-to-day application?

Directive/ Regulation	Very poor	Poor	Average	Quite high	Very high
MAD			X		
PD			X		
TD		X			

Directive/ Regulation	Very poor	Poor	Average	Quite high	Very high
IFRS			X		
MiFID		X			
UCITS		X			

B) Accuracy/Technical soundness – How would you rate the accuracy in the sense or being correct and detailed enough and do they capture the relevant issues?

Directive/ Regulation	Very poor	Poor	Average	Quite high	Very high
MAD				X	
PD				X	
TD		X			
IFRS			X		
MiFID			X		
UCITS			X		

C) Striking the right balance – How would you rate the rules in striking the correct balance between different opposing interests?

(For example between i) flexibility in adaptation to changing markets and legal forseeability, ii) big market participants and small market players, iii) the securities industry and the consumers, etcetera?)

Directive/ Regulation	Very poor	Poor	Average	Quite high	Very high
MAD		X			
PD			X		
TD			X		
IFRS			X		
MiFID		X			
UCITS		X			

IV Supervisory convergence

18. How would you rate the quality of the level 3 measures (standards, guidelines, recommendations) that CESR has produced in relation to each of the following Directives/Regulations?

Directive/ Regulation	Very poor	Poor	Average	Quite high	Very high

Directive/ Regulation	Very poor	Poor	Average	Quite high	Very high
MAD			X		
PD			X		
TD	N/A	N/A	N/A	N/A	N/A
IFRS	N/A	N/A	N/A	N/A	N/A
MiFID		X			
UCITS		X			

19. How do you value the usefulness for the achievement of supervisory convergence of the tools that CESR has developed for strengthening supervisory convergence among EU/EEA supervisors?

The tools in question are:

- The guiding recommendations: for increasing legal foreseeability and harmonisation of day-to-day supervisory practices (Q/A-(Questions & Answers) Documents and databases of cases)
- Review Panel – documents as well as activities
- Mediation system
- Operational cooperation – there are operational groups in the Prospectus contact group, ad-hoc groups under CESR-Pol and CESR-Fin

Directive/ Regulation	Very poor	Poor	Average	Quite high	Very high
Q/A documents Databases of cases				X	
Mediation				X	
Review Panel				X	
Operational cooperation groups			X		

V Overall assessment

20. What is your overall rating of CESR's contribution to the creation of a genuine single market for financial services (FSAP and the Lamfalussy approach)?

Please provide an overall grade as well as a written response.

Weak	Of limited importance	Acceptable quality	Good	Very good
		X		

Open answer:

We recognise the positive contribution CESR has made towards the establishment of a genuine single market for financial services across Europe (FSAP and Lamfalussy approach). Included in many of CESR's achievements are the technical advice offered on: the prospectus directive, Market Abuse Directive (MAD), and the Market in Financial Instruments Directive (MiFID).

Whilst we acknowledge the Lamfalussy process has, to date, been provisional, we strongly recommend that this framework should be the basis for continuing work on supervisory convergence within the next 5 years, during which CESR should be given a greater opportunity to focus on achieving a pan-European, common supervisory culture.

21. Which aspects of CESR' work do you think CESR should further improve and why?

Open answer:

The BBA would like to see a change in the direction of CESR's work over the next 5 years, to focus more on achieving supervisory convergence, with the overarching goal being to develop the European financial system's contribution to the Lisbon strategy.

Supervisory convergence should be a principles-based, proportionate, outcome-focused approach to reach consistent regulatory solutions and removing undue differences in regulatory practice.

Four basic objectives should inform further work on supervisory convergence:

- protection of the interests of depositors/investors/insurance policy holders;
- promotion of financial integration;
- compliance with better regulation principles; and
- reduction of the administrative burden with which institutions have to cope.

When working towards supervisory convergence, it is important that regulators take into account what banks want from their regulators:

- reduced situations where national regulators are seeking to achieve uncommon outcomes;
- improving regulators' understanding of international capital and liquidity flows, and the operation of international capital markets;
- elimination of duplication of reporting, information provision and inspection requirements; and
- disclosing more information about their own supervisory approaches
- complimentary (rather than duplicated) supervision.

Level 3 committees which consider moving away from a consensus model should ensure that any new voting system fairly reflects where most financial services business is carried out.

The workability of certain directives within the Financial Services Action Plan has sometimes not been at an 'ideal' standard. It seems that political compromise at levels 1 and 2 has been the dominant driving force behind the drafting of certain directives, bring both technical and implementation problems at level 3. This was echoed by our members' comments. Whist we recognise that it is not the purpose of CESR to overturn legislative provisions adopted by the other levels of the Lamfalussy framework, there is a general consensus that increased flexibility in the interaction between levels 2 and 3 would improve the overall process.

It is also apparent that CESR has not yet found an adequate to both the running and funding of projects that contain a large amount of technological support, an example of this being CESR's current development of the Transactions Reporting and Exchange Mechanism (TREM).

The creation of TREM should permit reports received, post-MiFID implementation, to be exchanged between national regulators. However, national regulators do not have identical transaction reporting requirements. More work is needed in the area, so that a common approach towards the reporting of derivatives can be found among national regulators, and then try to move towards a system of common requirements for the context of transaction reports.

22. Which aspects of CESR's legal and institutional framework do you think the EU institutions and Member States should further improve and why?

Open answer:

Prior to the publication of the Lamfalussy report in February 2001, the various national regulators of Europe were severely lacking in regulatory connections. The Lamfalussy process represents a major improvement in comparison to this situation.

The BBA is of the view that the current Lamfalussy process is generally sound. It provides a flexible framework for achieving its objectives, within which evolutionary learning-by-doing will improve matters further, and it should be the framework for continuing work on supervisory convergence over the next five years.

When reviewed in context of the starting point six years ago, the Lamfalussy process has, so far, achieved a great deal. However, the principle achievements of the Lamfalussy process have been associated with law-making, and assisting in the understanding of these laws, rather than mutual cooperation on supervisory convergence. It would not be reasonable to expect greater strides in supervisory convergence across Europe, due to the level of technical advice CESR and the other level 3 committees have had to propose on the incoming EU legislation.

We are of the belief that CESR's direction should change over the next five years, to focus more on achieving supervisory convergence, with the overarching goal being to further develop the European financial system's contribution to the Lisbon strategy. However, there has to be a clear agreement about the objectives of supervisory guidance, and the limits of convergence. There will be situations where different approaches will be acceptable from country to country, or from market to market. CESR has undoubted expertise; however, for CESR to achieve common regulatory outcomes and supervisory work methods, there needs to be a reduction in the level of advice it has had to previously give on incoming EU legislation. The focus should be on practical projects which will deliver benefits to the market and the regulators. We would also like to CESR turning its attention to ways in which the efficiency of supervision can be improved, so that the financial services industry faces neither excessive regulatory burden, nor a restriction of fair competition.