



THE ROLE OF CESR AT “LEVEL 3” UNDER THE LAMFALUSSY PROCEDURE

MEDEF COMMENTS

This consultation paper presents the views of the CESR on how its role should be organized at level 3 under the Lamfalussy procedure. MEDEF wants to present the following comments:

Coordinated implementation

Question 1:

Do you agree with the described role of CESR with respect to the coordinated transposition and application of EU law?

Question 2:

Do you see an "additional role" for CESR under level 3 where CESR could contribute to the co-ordinated implementation of EU law? If so, please explain what CESR should do to establish the role proposed?

MEDEF globally agrees with the principles proposed for coordinated implementation. It is in favour of a harmonisation of CESR Members rulemaking powers, which would be useful to favour integrated European financial services. Moreover proposal of “package meetings” where Member States and national regulators can discuss any transposition problems should be approved.

MEDEF does not have any suggestion for additional role.

Regulatory convergence

Question 3:

Do you see any other aspect of regulatory convergence where CESR could play a role?

Question 4:

Do you think that CESR could play a role in providing coordinated opinion on new services or products with pan-European scope?

Question 5:

Would you consider endorsement by the Commission of the common guidance established by CESR as helpful tool to ensure consistent application of EU directives/regulations?

The “bottom up” approach is a necessary complement to the normative aspects of the Lamfalussy procedure. In this respect, MEDEF strongly encourages the closest cooperation between competent authorities.

On the other hand, MEDEF wants to reiterate its proposal for enhancing regulatory convergence, consisting in implementing a system of annual reports that should be provided by each national securities regulator on the progress achieved in harmonising national regulations with the new legislation. This would give a clear view of national practices as required for Level 3.

CESR is proposing to alert the Commission regarding needs to update Level 2 measures and possibly, level 1 texts. MEDEF may consider this as helpful only if it is used both in cases where lightening or complements are judged necessary. Indeed it would be very damaging for the European financial markets efficiency to limit this possibility to an additive procedure. To ensure the best progress approach of the FSAP, the question of deleting any measure must also be examinable, if the implementation of such a measure has proved to be either useless or counterproductive.

Regarding the proposal for upgrading any CESR's standard, MEDEF does not consider that as a priority. In any case, it would be necessary to strictly secure such a procedure. Market participants must be at least consulted on the opportunity of any upgrade. MEDEF estimates that such an initiative should always result from a demand either of the Commission or directly of market participants.

Also, it could be useful that CESR play a role in the elaboration of a coordinated opinion on new services or products with pan-European scope by request of market participants. Especially a system of "pre-consultation" to obtain a comfort before any new products or services marketing is desirable.

Supervisory convergence

Question 6:

Do you see any other aspect of supervisory convergence where CESR could play a role? If so, how and why?

Question 7:

What kind of mediation role do you consider would be appropriate for CESR?

Question 8:

Do you have any comments on the catalogue of all mutual recognition and cooperation obligations under the Directives where CESR is active (see Annex 4)?

All supervisory coordination measures such as creating databases and implement "urgent issues groups" where necessary are positive initiatives. MEDEF approves CESR practical approach used in the IFRS implementation works and encourages a general use of those practices.

Regarding the mediation system, MEDEF considers that it would be helpful provided that a strict framework is implemented. In its answer to the IIMG consultations, MEDEF already expressed its main concerns on that topic:

- Securities regulators contributing to CESR activities should only have the possibility to refer cases to it where they have evidence of practices that are in breach of CESR standards or guidelines or where decisions taken at national level, although not contrary to regulation, result in obvious competition distortions.

- Actors who are subject to the regulations implemented by CESR and the professional associations who represent them should also have the possibility to refer the practices of a Member State to CESR where they result in obvious competition distortions in breach of CESR standards and guidelines.

MEDEF does not have any comment regarding Annex 4.

To conclude, MEDEF wants to stress the necessity to implement a coordinated approach of any initiative of CESR at Level 3 that should always be shared by EU Commission, or requested by market participant. Indeed, harmonisation efforts must be driven keeping in mind the FSAP goals; it must especially encourage flexible rules in order to enhance EU competitiveness and innovation. That is the reason why the whole action of CESR at level 3 should not lead to an ever growing superposition of rules.
