

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

I/ Coordinated implementation of EU law by CESR members

Question 1: Do you agree with the described role of CESR with respect to the coordinated transposition and application of EU law?

CESR envisages developing its role at level 3 to coordinate the implementation of European regulations and to contribute to the convergence of regulations as well as of supervision carried out by regulators.

AFEP is in favour of CESR arranging coordination in order to avoid divergent application of European texts. It thus supports the recent creation of the Review Panel, whose role is to ensure the implementation of European legislation at the level of Member States coherently and in the stipulated time frames.

It also notes with interest that this Panel could set up a special group on a technical subject (annex 3) where necessary.

In this context, it holds the view that companies or organisations representing companies should be linked to the reflections once the subjects dealt with concern them.

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?

AFEP considers it useful for CESR to carry out the new activities mentioned for level 3. In particular, the establishment of a network of CESR experts advising appears to be an efficient means of ensuring a coherent implementation of European texts in the European Union.

Even if the different activities envisaged by CESR are satisfactory, it seems necessary to confide an additional role to CESR.

As such, beyond a harmonisation relating to the content of the texts, AFEP considers it important for CESR to ensure the harmonisation of the implementation dates for its texts. It holds the view that CESR should coordinate these dates of implementation within all of the Member States so that European coordination precedes implementation of the texts by the national regulators.

II/ Regulatory convergence

Question 3: Do you see any other aspect of regulatory convergence where CESR could play a role?

AFEP considers the role played by CESR at level 3 necessary in order to ensure the broadest possible harmonisation in the European Union.

It considers that this role must be pursued to achieve a single set of regulations rather than a combination of European and national regulations.

In this respect, it will pay close attention to the upcoming consultations on implementation measures relating to the Transparency and Investment Services directives.

Question 4: Do you think that CESR could play a role in providing coordinated opinion on new services or products with pan-European scope?

CESR envisages providing opinions on new European products or services.

AFEP is not opposed to this.

Question 5: Would you consider endorsement by the Commission of the common guidance established by CESR as a helpful tool to ensure consistent application of EU directives/regulations?

CESR envisages intervening in fields that are not covered by European legislation. In this context, it would adopt autonomous standards, recommendations or indicative comments likely to be integrated later by the European Commission in European regulations in accordance with a level 2 procedure, and even into level 1 texts.

AFEP is in favour of the harmonisation goal pursued by CESR. However, it considers that certain points brought up by CESR do not fulfil this objective.

In particular, it is not desirable for competent authorities that are members of CESR to be able to introduce CESR texts (standards, recommendations or indicative comments) into their regulations voluntarily. This possibility would very frequently create divergences in application within Member States, which conflicts with the harmonisation desired.

Moreover, even if the broadest possible harmonisation is desirable at level 3, AFEP holds the view that reinforcement of the legal status of the texts developed by CESR (transformation of standards, recommendations or indicative comments in level 2 or 1 texts) is not necessary for their application within Member States.

A change of this type would deprive the texts drawn up by CESR of the flexibility required for an adaptation to market developments and would risk making the regulations substantially

more cumbersome. Moreover, it would obscure the distinction between level 2 measures (whose field of application is defined in the directive) and level 3 measures, which entail the application of higher level measures to differentiated situations.

In the majority of cases, it would not be relevant to give a general scope to such decisions through regulations. In rare cases where a new set of regulations could be envisaged, it would be necessary to follow all of the level 2 procedure and to undertake public consultations relating to both the opportuneness and content of the measures proposed.

III/ Supervisory convergence

Question 6: Do you see any other aspect of supervisory convergence where CESR could play a role? If so, how and why?

CESR intends to set up a centralised database on the application of IFRS aimed at the supervisory authorities. CESR wonders about the opportuneness of extending this system to other fields (interpretations of the regulations, judicial decisions).

AFEP is not opposed to the extension of this system to other domains, subject to the system fulfilling the conditions indicated in its response to the consultation of October 2003 (CESR/03-317b):

- access to the database solely for supervisory authorities participating in exchanges of information;
- application of the professional secrecy system in force for national and European stock market regulators;
- regular information of the public on the positions established in this way by the supervisory authorities, in compliance with principle 21 retained in CESR Standard no.1 (March 2003)

As a complement to this system of centralisation, AFEP recommends the implementation of a mediation function at the level of the national authorities. A function of this nature would make it possible to solve difficulties that may arise, during the review of the prospectus, between the competent authority and issuers, while fitting into time frames that are compatible with those of the prospectus directive (i.e. in the ten days following requests for approval of the prospectus).

Question 7: What kind of mediation role do you consider would be appropriate for CESR?

Among the different reflections undertaken by CESR, it envisages the creation of urgent issues groups to supply rapid responses to specific questions. This system corresponds to the role of mediation between regulators likely to be fulfilled by CESR.

AFEP

AFEP is in favour of the idea of urgent issues groups that respond to issuers' expectations that documents will be completed rapidly.

By submitting the different positions worked out by members of CESR to these urgent issues groups, CESR would make it possible to solve the problems raised more rapidly and coherently.

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)?

No comment.