



EFFAS THE EUROPEAN FEDERATION OF FINANCIAL ANALYSTS SOCIETIES

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Comment by EFFAS on THE ROLE OF CESR AT "LEVEL 3" UNDER THE LAMFALUSSY PROCESS (Ref. CESR/ 04 – 104b)

Dear Mr Demarigny,

EFFAS, the European Federation of Financial Analysts Societies is the umbrella organisation of national analysts societies. EFFAS comprises 22 national member societies representing more than 14,000 investment professionals, mainly financial analysts and asset managers.

We appreciate the opportunity to participate with our opinion on the consultation paper published by CESR. The opinion is structured as answer to each of the questions asked by CESR in this paper.

Preliminary Note

The Consultation Paper highlights the increasing complicated structure to achieve an internal market for financial services. The description of CESR's role in the process of European legislation, regulation and supervision shows many functions the legal basis of which is in some instances questionable.

This concerns, in particular, some functions in the implementation process of European legislation on the level of the member states. CESR sees its role in influencing via its national members the respective legislation to implement the various directives. In addition, it sets standards and binds by internal agreements and peer pressure the national regulatory and supervisory authorities in applying their national provisions according to rules and understandings set by CESR.

The legal basis of these agreements or understandings is not really defined. It seems that it is the force of facts which counts. This opens the way for conflicts with national constitutional systems, court decisions etc. The wording of the consultation paper is consequently rather cautious. This consultation paper is an indication that the goal of a perfect harmonisation which CESR favours may eventually not be achieved in this way. There may be too many cooks spoiling the broth.

CESR and its member agencies should press for changing the level 2 legislation from the type "directive" to the type "regulation" which applies directly in all member states. Such a change could give CESR the role of issuing guidelines interpreting the level 1 directive and the level 2 regulation on a European level and monitoring the application of the regulation in the member states.

Having written this, we feel nonetheless that the paper is a valuable able effort to achieve a substantial improvement of the harmonisation in law and fact. We support CESR in this effort.

To Question 1:

EFFAS agrees with the described role of CESR.

To Question 2:

See Preliminary note.

To Question 4:

EFFAS is of the opinion that CESR should and could play an important role in assessing the regulatory consequences of new types or forms of financial services or products. Assessing such new forms or types requires on the one hand a judgement as to whether such services or products ought to be regulated or not, are already subject to a particular directive (or regulation), whether a directive allows stricter national rules or whether there is 1:1 implementation required.

In a second step, CESR ought to intervene when and if national regulators and/or supervisors diverge in the categorisation of services or products or application of directive provisions to a particular service or product. Such divergence might not be of great impact if there are no different legal consequences. If a divergent categorisation means the application of different set of rules, it becomes an obstacle to harmonisation.

To Question 5:

EFFAS is of the opinion that the Commission should endorse the common guidance established by CESR. The Commission is the European institution which is primarily responsible for the monitoring of the proper implementation of European legislation by the member states. The endorsement by the Commission of a unified interpretation provided by CESR would give such interpretation added authority.

To Question 6 and 7:

At the present time, the public and in particular associations, firms and the public involved in the financial markets, participate through consultations and hearings in CESR's activities to promote convergence. EFFAS believes that CESR should also institutionalise an access to CESR for those groups on an ad hoc basis which would allow them to bring to CESR's attention individual cases, in particular cross border issues or issues of interpretation of interest to the community at large, which CESR might consider in its convergence work.

In some cases, the national regulators might introduce such cases into CESR's discussions. Other cases might never be introduced by the national supervisor to CESR due to a variety of reasons, such as national regulatory policies, problems of co-ordination within a large agency, underestimation of the problem's dimension.

CESR does not have the competence to decide such issues with respect to the parties involved, but it could use these cases to push a common interpretation which in turn might have weight with national regulators and national courts. If CESR does not see for itself such an institutionalised role as European ombudsman for interpretation divergences between public and national regulators and supervisors, it should launch or support any initiative to establish such an institutionalised access to the Commission.

Your sincerely,

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