

4 February 2005

**CESR'S PRELIMINARY PROGRESS REPORT**  
**"WHICH SUPERVISORY TOOLS FOR THE EU SECURITIES MARKETS?"**  
**AN ANALYTICAL PAPER BY CESR**  
**OCTOBER 2004 (REF. 04-333F)**

COMMENTS OF EURONEXT

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CESR's "Himalaya Report" on supervisory tools is most welcome as it constitutes an important step in the search for better regulatory arrangements in the financial sector in Europe. It is indeed a very useful contribution in the context of the "post-FSAP" phase, identifying very accurately the needs of users as well as the related challenges. Moreover, we believe that a number of its suggestions could significantly reduce the cost of capital market intermediation in Europe.

Euronext is a trans-European exchange operating cash equity and/or derivative markets in five Member States with a joint management comprising nationals of all five countries and shareholders throughout Europe and the US. As such, it concurs in the objectives expressed by CESR, and agrees that further practical solutions, within the current legal framework, are needed in order to make the Lamfalussy arrangements work well particularly at level III with a view to ensuring, from both a global and European perspective, a coordinated, efficient and cost-effective implementation of EU measures in financial regulation.

In that respect, it is essential to ensure that regulators in Europe operate in a truly efficient framework, allowing for the implementation of **coordinated financial services regulation** as well as for **cooperation in the supervision of transnational entities operating on a multijurisdictional mode**. We therefore agree that convergence of approaches and decisions within the Network of securities regulators is necessary as well as equivalent powers and similar capabilities to all national regulators, at least in the areas of exchange supervision. Convergence, particularly where it results in identical requirements, will make a significant reduction in the exchanges' burden of regulation and hence to the competitiveness of EU exchanges. It is also important that arrangements to be set up keep the costs of regulation as low as possible again with a view to increasing the competitiveness worldwide of Europe's financial markets.

We very much appreciate recognition in the report of the fact that **more has to be done in enhancing cooperation between national regulators**, and most of the proposed improvements in this respect are welcome.

**An enhanced cooperation within the Network of regulators is needed**

As stated in CESR's analysis, the integration of the securities markets in the EU varies significantly according to the sectors and the categories of market players considered. On the legal side, the regulatory framework in Europe is becoming more integrated. The FSAP has indeed created a new and comprehensive regulatory framework in the financial services sector. Nevertheless, we would like to point out that **implementation of such framework is yet to start in practice**, which makes it difficult at that stage to get a precise view of the level of integration which will eventually be achieved.

In this context it also worth noting that there are still **some important regulatory aspects left to national regulation**. For example, the framework for multi-lateral trading facilities (MTFs) organising trading on securities not admitted on a regulated market remains mainly national. The same applies for the rules governing whether a prospectus is needed, as well as its content, in case of public offers below 2.5M euros. On such topics, for which no European harmonised framework has been foreseen by EU legislative measures, a reinforced cooperation between national regulators will be necessary in order to achieve an integrated financial market in Europe. In that perspective, better and detailed definition of the content of the supervisors' general objectives, and discussion of the supervisory programmes would indeed be quite a useful task for CESR to set in hand.

In all instances and in order to ensure that integration will go forward, both in fields where harmonised regulatory frameworks already exist and those where it is not the case, we welcome CESR's proposed improvements to cooperation between all national regulators **in order to ensure homogeneity in regulation and supervision** at a European level. For this purpose, it is important that regulators have the equivalent tools, but this should not exclude a certain level of flexibility in the way regulation is made.

Indeed, one must recognise that regulators' powers and capacities today vary across Europe according to the differences in cultures and habits in the various Member States. We endorse that greater uniformity of powers would help in solving a number of difficulties, and the proposition would indeed serve better trans-national operations. In this perspective, we fully agree with the statement that competent authorities need to have the same tools and powers in order to be able to cooperate fully. However, this should not be at the expense of the possibility to innovate and develop specific arrangements to the satisfaction of market participants. In other words the **"regulators' tool box" should be by and large the same but flexibility should be allowed** as to the way it is used, precisely because of the risk of inhibiting innovation which is vital for promoting and maintaining competition.

We advocate that the powers of regulators should **allow fast reaction to innovation** and market developments. We have therefore some reservation on the following items

developed by CESR. We do not see very clearly the advantages of a “pre-clearance” at CESR level for innovative products or services before applying for national authorisation and passporting. We note nonetheless that CESR envisages this as a possibility left open to market participants and we are of the opinion that this should not be transformed into a compulsory step. Moreover, we find rather unclear and possibly inappropriate the proposal that a CESR member, where relevant for the Single Market, would be obliged to consult other members before taking decisions having potential significant impact on other market players/players. Although we consider that in the context of the implementation of the Market Abuse Directive, cooperation between the regulators when setting up accepted market practices is suitable and necessary, this proposal as phrased in the report appears too broad. No example of what would be considered as having a potential significant impact on other market player/players is given. We fear that such a wide and unspecific proposal, in particular when applied to emerging issues or innovative practices, is not appropriate as this will delay any adequate regulatory response and therefore inhibit innovation in Europe, which would have adverse consequences on the competitiveness of Europe’s financial markets vis-a-vis global competition.

In order to strengthen cooperation, it is also essential that regulators are made aware of difficulties when national regulation and regulatory powers prevent the development of integration of Europe’s financial markets.

We therefore fully support the idea of involving market participants in the evaluation of the implementation of EU regulation by Member States, through an appropriate “**Consultative Panel**” and believe that it is key to ensure that such an exercise is tightly linked with the real concerns of industry. Nonetheless, we have some reservation on the composition of such panels, as we believe that currently such panels do not adequately represent market participants. For instance, the panel dealing with the Transparency Directive does not include any representative from exchanges, whereas they are heavily involved in several aspects dealt with by such Directive. We would also encourage the development of supervisory cooperation in the context of the implementation of EU legislation in national rules. The use of transposition tables and widespread use of transposition groups would be useful to ensure consistency and transparency. We believe it equally important to involve market participants in the “**Review Panel**” process set up by CESR to check transposition of standards, recommendations and guidelines.

Concerning the **mediation mechanism** proposed by CESR in case of lack of cooperation, we believe such mechanism will have to be worked out in such a way that the fact that it is not independent from the community of regulators does not adversely affect its efficiency. Furthermore, we would support the complementary idea of a European ombudsman service for market participants, providing a quick, flexible, independent and anonymous process in both retail and wholesale markets to counter insufficiently well-implemented securities regulation or supervisory decisions that are considered not in line with EU legislation. As stated in a FESE policy proposal on that issue (June 2004), “*CESR and its national bodies should be parties to the ombudsman statute and commit themselves to implement any decision; (...and) the ombudsman should be accountable to EU institutions*”.

Euronext endorses most of the proposals put forward by CESR regarding **enforcement coordination and decision making convergence**, which we think are very important in developing efficient cooperation between CESR's members. This is particularly important for transnational exchanges.

In particular, we support a more active use of joint investigations, under the umbrella of CESR-Pol or CESR-Fin when desirable and as appropriate, not least to increase the efficiency and minimise the cost of such investigatory work. We also support the creation of **databases of sanctions** and the enhancement of CESR members' awareness of such sanctions. In this respect, it is also crucial that enforcement of sanctions be done in the same way in the various Member States.

We also welcome the **creation of a central/centrally accessible transaction reporting system** under the MiFID (accessible by all competent authorities). We believe that the creation of a European single equity, bond or derivative market requires such a comprehensive and easily accessible source of market data. This is also relevant for the storage of regulated information in the context of the Transparency Directive.

We wish however to draw the attention of CESR to the need to take into account the role that the private sector can play in developing efficient services tailored not just to the needs and expectations of regulators, but also to market participants and especially investors.

In relation to data that supervisors may require from market participants, in particular when an entity is supervised by several CESR's members, it would be important to ensure that all **such regulators, requiring data on a particular aspect, do so jointly and in accordance with a similar format**. This is crucial not only to cut down the costs of regulation, but also to enhance cross border activity.

For all the proposals mentioned above that Euronext supports, we wish to draw the attention of regulators to the need to closely look at costs implications and to ensure that costs remains at all times proportionate to benefits.

**Further tools should be developed as concerns the regulation/supervision of transnational entities.**

Euronext welcomes the attempt made in the report to tackle challenges posed by multi-jurisdictional market players since Euronext is one of them. Nonetheless, we wish to underline that such issues cannot be only seen as challenges to the home/host country relationship.

In the particular case of Euronext, the host and home debate is misplaced since in our model the most prominent feature is that there are five home countries. The problem faced by transnational operators is not always a home/host issue. In our case, the issue is more the following: how five regulators with equivalent concern and duties over a multi-jurisdictional entity, which has fully integrated management and infrastructures, can exercise their powers in such a way that it allows smooth operation in several jurisdictions and avoids the cost of different regulators imposing different requirements on otherwise identical activities.

Euronext is of course supportive of the proposal made regarding the elaboration of a standard “**Memorandum Of Understanding**” for the supervision of trans-European market participants, having benefited from such an arrangement since its creation. We recognise, indeed, that such a cooperation agreement between the relevant regulators has already been quite useful for the development of Euronext. There is still nevertheless room for improvement. Indeed, such arrangements do not of themselves prevent potential conflicts between regulators arising from different cultures and approaches to financial markets/activities. Not do such arrangements always make on a fast moving organisation, since all the regulators have to agree and move at the same pace.

When cooperation through the Network of regulators (e.g. via a MOU) would encounter its limits in practise, the appointment of a “**coordinating regulator/supervisor**” could be a very interesting solution as a way to deliver coherent regulation. We support CESR’ proposal in that respect, **as a way to improve and strengthen coordination between regulators**.

Indeed, considering the development of “multi-jurisdiction” market infrastructures - such as Euronext - and the growing number of market participants also operating across borders, a framework of further cooperation between national supervisors should be efficiently established in order to support that evolution.

In that respect, Euronext endorses the statement of the Commission Securities Expert Group’s report dated May 2004, that “*the various national supervisors should be required to adopt a modus operandi that ensures a true commitment to a Single Market dynamic, taking account of market participants needs resulting from market integration*”. There is indeed a risk that multijurisdictional operators face undue regulatory complexity resulting from multiple competent national supervisors, rather than an efficient and streamlined supervision framework. In that view, setting up practical arrangements increasing cooperation at all levels (authorisation, control, sanctions) is necessary.

This concept of a coordinating supervisor in order to foster higher cooperation between regulators has also been voiced by the European Financial Services Round Table in the banking field for all aspects of prudential supervision of cross-border financial institutions: a “*lead supervisor*” would be identified and the only one competent - other local supervisors being involved through information exchanges and advice (cf. EFR Recommendations, June 2004). A similar route could potentially be envisaged in the securities field to ensure regulatory integration, to avoid the risk that cooperation between national regulators within the Network would not be sufficiently efficient and could indeed cause conflicts within a multijurisdictional operator, which either had or was seeking to gain efficiencies through identical arrangements in each of the jurisdictions in which it had a base (e.g. rule books).

We recognise, of course, that determination of the said “coordinator” would be sensitive, and that it would be sensible for it to be determined on a case-by-case basis.

Simplified supervision could in this context be implemented through **delegation of powers**, or if this was legally possible, action within ad-hoc joint structures/arrangements tailored to market needs. We understand that such delegation could at that stage only be envisaged **for identified and specific functions**, as a general delegation of supervision powers would not be legally possible, such

delegation mechanism would nevertheless effectively offer the possibility to enhance resolution of issues arising from cross-border situations.

The ultimate power of taking **single decisions at a EU level** would be seductive as a matter of principle, in the perspective of efficiency and consistency. We are nevertheless aware that it would raise important **questions of accountability** towards European institutions and that it would imply a reform of legal structures, that renders it only envisageable in the long term. In case such a route would be followed, the “five tests” approach proposed by CESR (efficiency, subsidiarity, balance, integration, uniformity) would be an appropriate assessment of relevance for those decisions.

However, it would still be highly desirable from an efficiency, cost-effective and pro-competitive point of view, for the regulators of a multijurisdictional entity to reach single decisions on matters which affected such a group as a whole.

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