



Milano 31 maggio 2004
Prot. 84/04 MCO/mco

To: CESR
11-13 avenue de Friedland
75008 Paris
France

RE: ASSOSIM's answer to the Consultative Paper "The role of CESR at "Level 3" under the Lamfalussy Process".

ASSOSIM is the Italian Association of Financial Intermediaries (see the list enclosed), which represents the majority of Italian financial intermediaries, banks and branches of foreign institutions, active in the Investment Services Industry.

We very much appreciate the opportunity given by CESR to express our views on such a key issue as the Committee's role at Level 3 legislation.

As the legislative phase concerning the measures contained in the Financial Services Action Plan is almost at an end we are all aware that the success of FSAP in terms of integration of financial markets will only be achieved with the consistent transposition and enforcement of the European legislation at national level.

Therefore the importance of levels 3 and 4 legislation is clearly essential to completing the process and making it effective.

In the consultation paper the CESR's role under level 3 is divided into three categories of issues (this follows the Lamfalussy Report where besides the co-ordinated implementation, a reference is made to the importance of supervisory and regulatory convergence):

- Coordinated implementation of EU law
- Regulatory convergence
- Supervisory convergence.

Coordinated implementation of EU law

As for the first category we believe that it represents the meaning itself of the level 3 under the Lamfalussy approach.

In fact the Lamfalussy Report says that: "The essence of Level 3, therefore, is to greatly improve the consistency of the day to day transposition and implementation of Levels 1 and 2 legislation. It is the

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national regulators who have the prime responsibility for this work – acting in a cooperative network”.

Apart from the third category which considers the supervisory aspects, the second can be considered mainly as a means through which achieving the co-ordinated implementation of EU law (of course we are aware that some actions can be taken also in areas not covered by the EU law).

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

We agree on what provided for by CESR regarding the role it should have at level 3 with respect to the coordinated transposition of EU law at national level.

We would like to stress the importance at this stage of both the coordination among regulators (in the “forum” of the Committee of Securities Regulators) and the coordination among member states and national regulators.

As for the coordination among the latter subjects, we agree on the intention of making more generalised the use of “package meetings” organised by the European Commission in order to discuss problems arising from the transposition and examine preliminary draft measures.

We believe that transparency on such meetings and their output should be guaranteed.

As for the idea of keeping alive the network of CESR experts involved in drafting the level 2 advice we believe it to be a wise suggestion.

We reckon that the role of CESR Experts at level 3 and 4 legislation is very important having them all the competence and expertise to carry out a role in these phases of the procedure as well.

This choice would allow all the parties involved to take advantage of the expertise and the continuity of the work carried out at the former levels by the Expert Groups.

On this matter we would suggest to favour the dialogue of market practitioners with CESR at level 3 legislation on all the issues concerned.

It could be useful to give practitioners the chance to directly highlight to CESR concrete faults of the coordinated implementation of UE law, regulatory and supervisory convergence.

We believe, in fact, that confining the dialogue among the Institutions and practitioners only at a national level is not opportune at this stage either.

We are aware of the fact that the Lamfalussy Report does not foresee any consultation process at this level legislation and we understand that. Nevertheless it has been widely stressed that it is highly important to have a means of communication with the Institutions on a European basis at the 3rd level legislation too.

The Expert Groups could represent a channel through which developing an open dialogue with the interested parties or just continue the dialogue started at the former levels legislation.

Moreover CESR should encourage its members to carry out widespread consultations with market practitioners at national level.

Besides, in this context, CESR proposes that the Level 1/Level 2 distinction should correspond to distinction between what is transposed into national laws and in rules of national regulators. This distinction could represent only a suggestion, but the connection between level 1 and national laws, level 2 and regulation cannot be compulsory and it should be decided on a case by case basis.

Moreover, with reference to the proposed new activities we agree on the circumstance that CESR members have similar rulemaking powers, also because the above represent a premise to the effectiveness of level 3 legislation.

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?

NO

Regulatory convergence

The Lamfalussy Report foresees that the coordinated implementation be achieved through:

- “- the issue of consistent guidelines for the administrative regulations to be adopted at the national level;
- the issue of interpretative recommendations and set common standards regarding matters not covered by EU legislation – where necessary, these could be adopted into Community Law through a Level 2 procedure;
- the comparison and review of regulatory practices to ensure effective enforcement throughout the Union and the definition best practice;
- peer reviews of administrative regulation and regulatory practices in Member States, reporting their results to the Commission and to the ESC”.

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

The regulatory convergence consisting of the issue of non binding guidelines, recommendations and standards is the means through which the coordinated implementation can be achieved, consistently with the Report of Wise Men.

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

YES. CESR was born as a forum to allow the exchange of views and dialogue among European regulators that is the increase of experience and knowledge.

As long as CESR keeps its original nature as international forum on issues such as new services or products we believe it to be very useful.

In our view any kind of endorsement by the European Commission (as for the following question) is not advisable on such technical issues where the contribution of market practitioners is particularly important. Especially in such cases the legislative procedure must start from the beginning on the European Commission's initiative at the first level legislation (see following answer).

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

Among the ways foreseen by the Lamfalussy Report in the definition of the activity to be carried out at the 3 level legislation there is a reference to the possibility ("where necessary") that interpretative recommendations be adopted into Community Law through a Level 2 procedure.

In our understanding of the mentioned passage of the Lamfalussy Report¹, the possibility of giving more authority to CESR guidelines, recommendations and standards through a possible endorsement by the Commission should not be seen as the key part of the suggestion.

We have to distinguish two different situations: 1) where level 3 concerns the transposition of measures adopted under the Lamfalussy Procedure and 2) where it depends on the initiative of CESR regardless of the adoption of a specific legislative measure and in areas not covered by the EU law.

In the first case unless the Institutions take the risk of over regulating, after two level legislation we do not see much room for the endorsement by the Commission of CESR guidelines, recommendations and standards through more legislation.

Moreover, after adopting CESR's guidelines into Community Law through a Level 2 procedure we could face the same problems of their consistent transposition we are trying to solve.

Therefore we would like to understand what an endorsement by the Commission means in CESR's view and discuss any of such possibilities with the Institutions.

Finally, we would like to remind the public debate on the direction to be given at level 3 legislation (see the IIMG second report). While considering the possibility of consistent implementation vs. discretion for national regulators, the supporters of the latter develop the issues relating to the need of flexibility of the 3rd level legislation. This would enable the regulation to take into consideration the peculiarities of different markets.

Despite our support for the consistent implementation and not for discretion in the mentioned debate, we acknowledge the reasons for flexibility and relative concerns which we believe need to be addressed. The right way to do that is not, in our view, further legislation at level 3.

¹ "... interpretative recommendations and ... common standards regarding matters not covered by EU legislation – where necessary, these could be adopted into Community Law through a Level 2 procedure".

In the second case where level 3 is not intended to implement 1 and 2 level legislation, possible guidelines, recommendations and rules by CESR can represent a first step to address the need of regulation on a specific topic. Some actions taken by CESR will give an input to the European Commission which on this basis can consider to use its power of legislative initiative and if the case start the Lamfalussy procedure from the very beginning.

Supervisory convergence

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

NO. We agree on what provided for by CESR.

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

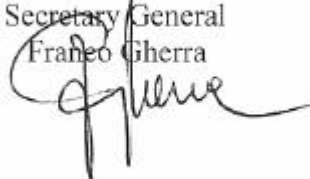
We think that CESR's description of the mediation role is sensible and very useful in order to have quicker solutions to disputes.

Of course subjects must retain the right to take the case before the Commission or the European Court of Justice.

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

Yours Sincerely

Secretary General
Franco Gherra


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