

Prague, 3 January 2005

Czech Securities Commission
Washingtonova 7
111 21 Prague 1
CZECH REPUBLIC

To Secretary General of CESR
CESR Secretariat
11-13 avenue de Friedland
75008 Paris
FRANCE

Ref.: 33/Ost/1/2005

Dear Fabrice Demarigny,

please find enclosed the overview of the general stance of the Czech Securities Commission on the preliminary progress report “Which supervisory tools for the EU securities market?”.

Yours sincerely,

Pavel Hollmann, MBA
*Chairman of the Czech Securities
Commission*

Ivana Sedláčková
Head of External Communication

Encl.: 2 pages

CESR – Preliminary Progress Report

Which Supervisory Tools for the EU Securities Markets?

Overview of the CSC's general stance

The Czech Securities Commission (the CSC) has considered with pleasure the proposed progress document “Preliminary Progress Report: Which Supervisory Tools for the EU Securities Markets?” that is looking to outline the concept of CESR activities in both coming years and the more distant future. The CSC supports the endeavor to broadly discuss the issue of CESR's further direction with relevant authorities and market participants before any formal document is approved or decisions are taken in this respect.

The future role of CESR should reflect, among others, the overall supervisory framework in the EU involving areas of securities, banking and other financial products and services. Formulating such a concept requires sufficient political competences, general support and deeper cooperation and harmonization of supervisory practice. They all are unavailable to CESR, though. No supervisory framework has begun to be discussed in depth within political levels with an appropriate accountability. The document and its proposals concern merely securities markets and remain largely unrelated to the possible future shifts in the general EU supervisory environment (e.g. a concept of the single EU supervisor) – the process, in which CESR may have merely an advisory function. The CSC believes that the long-term securities-market supervisory vision cannot be initiated separately, unrelated to other supervised areas, as presented in the Preliminary Progress Report by CESR.

A portfolio of available supervisory tools at the EU level should strongly correspond to the stage of convergence of the national (securities) markets and their participants. An adoptive and forward-looking supervisory strategy depending on the evaluation of the markets ensures appropriate investor protection and maintaining fair, transparent and secure securities markets in Europe. To comply with this mission, the CSC stands in favor of the exploitation of current and potentially available tools given to CESR solely within the existing FSAP framework to support its major objectives: improving cooperation of national authorities, acting as an advisor to the European Commission and coordinating the implementation of the EU legislation in the Member States.

Further comments

The convergence of national supervisions should coincide with the real convergence of the national markets. As the document concludes, the market/sector integration remains very heterogeneous, which also requires the supervision to be flexible as regards its tools and intensity to efficiently and effectively supervise the fragmented markets. Many of the factors causing the diversity are beyond the reach of national regulators/supervisors or CESR. They relate to specifics of the market and/or investment environments, such as different systems of commercial law, bankruptcy law, taxation, etc., which remain and will remain country-specific.

Therefore, requiring an equal reach and powers of national supervisors might have more significant consequences (and might be more costly) for the market and its players than retaining the coordination and mutual recognition principles at the current stage of the market heterogeneity. Moreover, an equivalent (or similar) incidence of supervisions with respect to the market participants is the key objectives and/or measures of the supervisory convergence rather than equivalent supervisors' tools, powers, resources and/or autonomy as such.

The CSC believes that the discussion regarding the possible introduction of more far-reaching approaches, which would shift (even partially) the decision-making authority and accountability from the national to community level, would be premature and exaggerative. This also concerns CESR's role in the mediation mechanism; CESR should provide advisory services and unbinding recommendation to its members, without any decision-making or binding "supervisory-of-supervisors" competences and/or consequences.

The mutual recognition principle, besides other tools, is the sufficient and proper mechanism to enable efficient and effective supervision within the EU even with regard to transnational issues in coming years. While a (partial) supervisory integration cannot be ruled out in the more distant future as a response to changing market conditions and/or needs, it constitutes no imminent issue to be incorporated into the CESR program outlook for coming years.

In conclusion, an adaptive and forward-looking regulatory/supervisory approach is needed on the increasingly homogenous EU securities markets. The CSC unambiguously supports CESR's coordination and advisory function among national regulators/supervisors (and towards the European Commission) and deeper convergence of supervisory environment across the EU through the mutual recognition principle, staff exchanges, joint training programs, etc., all being an integral part of the above-mentioned approach, which is applied within the current FSAP legal framework.