

**EBF Response to CESR's Consultation Paper on
Proposals for the Review Panel Work Plan****CESR Ref. 09-088****General remarks**

1. The European Banking Federation (EBF)¹ welcomes the opportunity to comment on the Committee of European Securities Regulators (CESR) consultation paper on proposals for the work of the Review Panel over 2009. This work, aimed to facilitate supervisory convergence, is of great significance in the view of the EBF to ensure that common EU legislation effectively results in the necessary degree of commonality of supervisory practices across Member States.
2. Upfront, the EBF would like to highlight the area of contingency measures/ emergency powers that supervisors have used with respect to short selling, as one of particular priority. Further uncertainties around these rules and market distortions as a result of their divergence should be avoided as far as possible. The EBF would therefore suggest that this high prioritisation should also be reflected in an early timing of this work.
3. As a further area of priority, the EBF would identify the divergences across Member States in passport notification. Within the EBF's membership difficulties in this respect have especially been encountered with the Prospectus Directive.
4. The EBF notes with interest CESR's intention to look at information which is available for securities under the Prospectus Directive. This should be helpful to inform the European Commission's current work around the White Paper on structured retail investment products.
5. The EBF additionally believes that the application of sanctioning regimes is an area where great progress can be achieved through cooperation at CESR level. However, EBF members expect that questions of liability would in practice be of greater significance than the use of sanctioning powers.
6. The EBF also supports work on the responsibilities of fund depositaries under the UCITS Directive in different Member States. From its perspective of representing both depositary banks and fund distributing firms, it looks forward to discussing with CESR the possible conclusions from the Committee's findings. On this occasion, the EBF would encourage CESR to consult with the industry before drawing any conclusions, or alternatively that the European Commission would carry out industry consultation on the basis of CESR's findings.

¹ Set up in 1960, the European Banking Federation is the voice of the European banking sector (EU & EFTA countries). The EBF represents the interests of some 5000 European banks: large and small, wholesale and retail, local and cross-border financial institutions.

7. In addition to the areas suggested by CESR, an area where EBF members have observed divergences in the requirements of national authorities is that of the responsibilities of UCITS asset management companies. This is of increased significance after the implementation of the asset management company passport, whose functioning is dependent upon a certain degree of consistency of requirements across Member States. The EBF would suggest that CESR consider in this regard the implementation of the rules, but would flag to the Commission if it believes that divergences are linked to the national transposition of the UCITS Directive, rather than questions of practical implementation.
8. Where reviews touch on liability regimes care must be taken to take account of both the specificities of national depositary systems and the differing civil law regimes. Furthermore, it is clear to the EBF that the solution for UCITS funds must be the same as for other financial instruments so as to avoid a two-class depositary system.
9. Furthermore, the EBF recommends that the Review Panel also considers the implementation of MiFID with regard to illiquid products.

Specific questions on the Transparency Directive

10. With regard to the Transparency Directive, the EBF would generally welcome a wider review and comparison of national implementation as there is indeed evidence of increasing divergences. In addition, one specific aspect of particular attention should be national authorities' understanding of cases of "acting in concert".

Concluding remarks

11. The EBF believes that CESR has overall targeted the right issues in its Review Panel work plan.
12. It has flagged the areas of short selling and the functioning of passports as issues of current priority.
13. Further suggestions have been made for work around illiquid products under the MiFID and around asset management companies in the UCITS Directive.
14. The EBF looks forward to the conclusions from the Review Panel's work and stands ready to further work with CESR on the goal of supervisory consistency. This should be with the ultimate objectives in mind of ensuring a European level playing field in financial services and of achieving efficiency, alongside effectiveness, in supervision.