THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS

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Questionnaire on Assessment of CESR's activities between 2001 and 2007

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ASSESSMENT of CESR'S ACTIVITIES BETWEEN 2001 AND 2007

Purpose

Since the establishment of CESR in September of 2001, CESR has delivered all its mandated level 2 advice in the securities field, and has also delivered level 3 measures, standards and recommendations and guidelines. CESR's work is now increasingly focused on level 3 of the Lamfalussy structure and to fostering supervisory convergence in the day-to-day application of financial regulation.

CESR "should have the confidence of the market participants" as set out in point 6 of the Stockholm Resolution. CESR now considers this an opportune time to assess the extent to which that is the case. CESR wants to know how the market rates CESR's performance to date, to see which areas for improvement the market finds and to consider whether the market believes that CESR is appropriately fulfilling its mandated obligation to involve the market in its activities. 2007 is the year in which the evaluation of the Lamfalussy process and its structures is taking place and an important component of such an evaluation is the markets view on CESR. CESR will report on the results of this questionnaire to the EU institutions within the remits of the Lamfalussy evaluation.

For an explanation of what CESR is and does, and an overview of the Lamfalussy system, please see the annex to the Press release.

Key areas of questions

The questionnaire has five sections. For each question you are asked to mark how well you think CESR has performed against a five grade scaling system. Please mark the relevant box with an X. In the event that further explanation of an answer is necessary, there is also room to do so at the end of each section.

Addressees of this questionnaire

The questionnaire is open to everyone who takes an interest in CESR's work and in particular to all market participants including consumer/retail investor representatives.

CESR has endeavoured to keep this questionnaire as short and to the point as possible, and anticipates that it should not take longer then 30 minutes to complete. CESR thanks you in advance for your time and willingness to participate in this important consultation.

Procedure

This questionnaire is open for answers until the 14th of September 2007. All responses should be posted on the CESR web-site function for responding to consultations. http://www.cesr.eu/index.php?page=consultation&mac=0&id=

All responses will be made public on the CESR-web-site unless the respondent explicitly states that publication should not take place.

FIRSTLY

Please fill out the name of the respondent you represent below.

European Banking Federation

a. Who are you?

Please indicate in which area you are active: (could be more than one):

Banking	X
Insurance, Pension, Asset Management, Institutional investor	X
Legal & Accountancy	X
Issuers	X
Investment Services	X
Investor Relations	
Government regulatory & Enforcement	X
Regulated markets, Exchanges & Trading systems	
Sovereign Issuers	
Individuals or consumer association	
Credit Rating Agencies	
Press	
Others	

b. Where are you active?

Please indicate your principle area of activity geographically

In one EU/EEA member state only	**In two-three EU/EEA member states**	**In multiple EU/EEA member states**	**Outside EU, with headquarter, with or without a permanent presence in the EU/EEA**
		X	

Section I Understanding the role of CESR

This section is meant to assess your understanding of the role of CESR.

1. How clearly do you understand CESR's objectives, (namely the role given to CESR and reflected in the Stockholm resolution, the Commission decision setting up the CESR and the CESR Charter)?

Not at all	Only a little	To a fair amount	Quite well	Very well
				X

2. How clearly do you understand CESR's priorities?

Not at all	Only a little	To a fair amount	Quite well	Very well
			X	

3. How well do you understand the specific role given to CESR in relation to its position in the EU legislative framework?

Not at all	Only a little	To a fair amount	Quite well	Very well
				X

4. How would you assess the influence of CESR in the EU legislative framework?

Very low	Quite low	A fair amount of influence	Quite high	Very high
			X	

5. How well do you understand the function CESR performs in facilitating the day-to-day application of financial regulation in the EU?

Not at all	Not very well	Only a little	Quite well	Very well
			X	

6. How well do you think CESR has been in explaining its objectives (A), role in the EU institutional system (B) and its priorities (C)?

A) CESR's objectives

Not at all	Not very well	Adequately	Quite well	Very well
			X	

B) CESR's role in the EU institutional system

Not at all	Not very well	Adequately	Quite well	Very well
			X	

C) CESR'S priorities

Not at all	Not very well	Adequately	Quite well	Very well
			X	

7. Please provide comments and suggestions for any improvements you may have regarding questions raised in Section I.

Open answer:

Generally, CESR explains its objectives, priorities and position in the European legislative system clearly and effectively. However, experience of the Committee's role, especially at Level 3 of the Lamfalussy Process continues to build. We would advocate for a requirement for all Level 3 Committee Chairs to give an account, in their annual reports to ECOFIN (namely, of why consensus could not be reached on major issues; and on technical matters reports could be made to Level 2 committees). These reports should also be made available and explained to the ECON Committee of the European Parliament in recognition of its fully fledged co-legislator role in financial services dossiers. This we feel would facilitate a greater understanding of the role of CESR within the European Institutions and amongst its stakeholders.

Section II Openness, transparency and consultation practices

This section seeks to assess the openness, transparency and quality of CESR and its consultation processes.

8. Would you say that CESR is an open and transparent organisation?

No not at all	Only to a limited extent	To a certain extent	Yes quite open and transparent	Yes fully transparent
			X	

9. How do you think the consultation process of CESR is working overall?

Not working at all	Works only to a limited extent	Works adequately	Works quite well	Works very well
			X	

10. What is your overall assessment of the consultation papers CESR publishes?

Weak quality	Quite weak quality	Acceptable quality	Good quality	Very high standard
			X	

11. What is your assessment of the comprehensibility of the consultation papers CESR publishes in relation to each of the following Directives/Regulation? [1]

Directive/ Regulation	Very poor	Poor	Average	Quite high	Very high
MAD			X		
PD			X		
TD			X		
IFRS				X	
MiFID				X	
UCITS				X	

12. How do you think that your written contributions to consultations are dealt with by CESR?

Poorly	Not very well	Acceptably	Mostly fairly and accurately	Absolutely fairly and accurately
		X		

13. How do you rank the usefulness of the open hearings that CESR holds?

[1] MAD= Market Abuse Directive, PD= Prospectus Directive, TD Transparency Directive, IFRS= International financial Reporting Standards, MiFID = Markets in Financial Instruments Directive, UCITS= Units in Collective Investment in Transferable Securities

Not useful at all	Limited usefulness	Adequate	Useful	Very useful
		X		

14. What is your assessment of the CESR web page in terms of its usefulness for transparency and openness towards markets participants and consumers/retail investors?

Very poor	Poor	Adequate	Good	Very good
			X	

15. How would you describe the change in the nature and level of transparency and openness of the legislative process in the EU's securities sector since the establishment of CESR (i.e. before and after September 2001)?

Less transparent and open	Slightly less transparent and open	There is no difference	More open and transparent	Much more open and transparent
				X

16. Please provide any other comments you may have regarding questions raised in Section II, regarding openness, transparency and consultation practices?

Open answer:

CESR has operated open and transparent consultation practices which have now become the benchmark for stakeholder engagement in financial services.

CESR's consultation papers are generally of a high quality. However, CESR could better illustrate the guidance it comes with at Level 3 by using practical examples covering a range of markets and/or scenarios. The increased use of regulatory and/or market failure analysis to justify the conclusions CESR comes to would be a welcome development. CESR should also pay close attention to the relative importance of the interests of stakeholder groups (buy side vs. sell side; retail vs. wholesale; consumer vs. industry etc.) in its formulation of advice and guidance.

CESR's feedback statements are a useful development. CESR's open hearings are also useful opportunities for stakeholders to submit their preliminary views.

Section III Rule making activity

This section of the questionnaire seeks to assess CESR's rule making quality in the course of the last five and a half years.

17. How would you rate the quality of the work CESR has done in relation to each of the Directives/Regulations for which CESR has given advice to the Commission during the last five and a half years, using the parameters A) to C) below?

A) Workability – How would you rate the workability of the rules in the sense of fit for their practical purposes in their day-to-day application?

Directive/ Regulation	Very poor	Poor	Average	Quite high	Very high
MAD			X		
PD				X	
TD		X			
IFRS			X		
MiFID			X		
UCITS				X	

B) Accuracy/Technical soundness – How would you rate the accuracy in the sense or being correct and detailed enough and do they capture the relevant issues?

Directive/ Regulation	Very poor	Poor	Average	Quite high	Very high
MAD				X	
PD				X	
TD		X			
IFRS			X		
MiFID				X	
UCITS				X	

C) Striking the right balance – How would you rate the rules in striking the correct balance between different opposing interests?

(For example between i) flexibility in adaptation to changing markets and legal forseeability, ii) big market participants and small market players, iii) the securities industry and the consumers, etcetera?)

Directive/ Regulation	Very poor	Poor	Average	Quite high	Very high
MAD				X	
PD				X	
TD				X	
IFRS				X	
MiFID			X		
UCITS				X	

IV Supervisory convergence

18. How would you rate the quality of the level 3 measures (standards, guidelines, recommendations) that CESR has produced in relation to each of the following Directives/Regulations?

Directive/ Regulation	Very poor	Poor	Average	Quite high	Very high
MAD			X		
PD				X	
TD	N/A	N/A	N/A	N/A	N/A
IFRS	N/A	N/A	N/A	N/A	N/A
MiFID			X		
UCITS				X	

19. How do you value the usefulness for the achievement of supervisory convergence of the tools that CESR has developed for strengthening supervisory convergence among EU/EEA supervisors?

The tools in question are:

- The guiding recommendations: for increasing legal foreseeability and harmonisation of day-to-day supervisory practices (Q/A-(Questions & Answers) Documents and databases of cases)
- Review Panel – documents as well as activities

- Mediation system
- Operational cooperation – there are operational groups in the Prospectus contact group, ad-hoc groups under CESR-Pol and CESR-Fin

Directive/ Regulation	Very poor	Poor	Average	Quite high	Very high
Q/A documents Databases of cases			X		
Mediation	-	-	-	-	-
Review Panel				X	
Operational cooperation groups					

V Overall assessment

20. What is your overall rating of CESR's contribution to the creation of a genuine single market for financial services (FSAP and the Lamfalussy approach)?

Please provide an overall grade as well as a written response.

Weak	Of limited importance	Acceptable quality	Good	Very good
			X	

Open answer:

The EBF's goal is a **common supervisory culture across Europe**. Three key elements should be taken into account in the evolution of CESR, in particular, and the development of the common supervisory culture in general:

- a supervisory culture that is **focused on the present and future risks** with resources allocated to mitigate those risks in the most appropriate and timely manner;
- a supervisory culture that is **more connected and drives towards common pan-European outcomes** based on shared objectives; and
- a supervisory culture that is more **permissive to business finding its own solutions** except where there is a clear and justified reason for public policy to intervene.

We recognise CESR's positive contribution in its first six year's of existence to the creation of a genuine single market for financial services. With this experience and a focus on the key elements above CESR could redouble its efforts in this important aspect in the future.

21. Which aspects of CESR' work do you think CESR should further improve and why?

Open answer:

First, **it remains an important objective for Level 3 Committees to promote more supervisory convergence, but we lack a robust European definition of the Level 3 concept.** For the EBF, based primarily on the experiences of CESR and CEBS, Level 3 has come to cover the following tasks:

- the delivery of technical advice for Levels 1 and 2 in response to mandates;
- consistent implementation of legislation and supervisory convergence;
- supervisory work, e.g. facilitating work of supervisory colleges;
- supervisory disclosure;
- enhancing supervisory co-operation, including the exchange of information; and
- resolving disputes between regulators e.g. mediation.

Second, promotion of supervisory convergence would also be helped by coming to a clear understanding and definition of "supervisory convergence." **For the EBF supervisory convergence should be a principle-based, proportionate, outcome-focused approach to reaching consistent regulatory solutions and removing undue differences in regulatory practice, which is ultimately based on best supervisory practices.** Four basic objectives should inform further work on supervisory convergence:

- protection of the interests of depositors/investors/insurance policy holders – this should be the overarching objective;
- promotion of financial integration;
- compliance with the better regulation principles; and
- reduction of the administrative burden which institutions have to cope with.

Furthermore, to achieve supervisory convergence it is essential to identify the factors, which inhibit the fulfilment of the above-mentioned objectives. Such factors should be informed and disclosed in an open and transparent way.

Third, Level 3 cannot be discussed in isolation from the context within which it operates. **Decisions at other levels in the overall Lamfalussy framework (as described above) to incorporate ambiguity and national derogations can and do create difficulties at Level 3.** These differences in approach cannot therefore be attributed to the approach of the Level 3 Committees. At the same time, it is especially important to recognise that it is not the purpose of Level 3 to overturn legislative provisions adopted by Council and Parliament, including national derogations, although Level 3 Committees may be required to advise on such issues.

Fourth, **the process of supervisory convergence can be accelerated by all supervisory authorities seeking to implement the practical recommendations of the "2nd Thierry Francq Report"** of April 2006. Flowing from the conclusions of that Report, we recommend the Level 3 Committees to focus on improving the knowledge and regulatory approaches of national regulators e.g. peer review, training programmes and staff exchanges and audits of national practices and differences. In parallel, there is a need to identify a common

understanding of how to assess progress. Two elements are important: identifying meaningful (non-simplistic) criteria and agreeing sufficient time for complex projects to develop.

Fifth, and related to the "Francq recommendations", in addition to mechanisms to mediate between different regulators' interpretations and applications of legislation, **there is also a need for an informal, non-confrontational process for firms and regulators to identify issues and concerns.** This would allow for these concerns to be resolved, as well as allowing for overall consistency of approach to be maintained, without having to resort to more formal procedures for enforcement, complaint or redress. We note that such *fora* are already in place with banking supervisors (e.g. CEBS' Operational Networking Platform). This clearly needs to be addressed in order to make progress on converging supervisory practices.

Sixth, we recommend that any suggested changes to Level 3, including any stemming from the current review of the Lamfalussy Process, to either the Lamfalussy framework, or to Level 3 procedures, need to **abide by the principles of better regulation.** We welcome the recent initiative of the 3 Level 3 Committees to launch a public consultation on proposed impact analysis guidelines, which is seen as important in order to deliver on the better regulation principles more generally.

Finally, we call on CESR to prioritise the **resolution of practical supervisory questions,** without undue delay. The delivery of **practical supervisory arrangements** that will enable authorities both to take advantage of proximity and local knowledge and to minimize duplication of work by both supervisors and regulated entities is necessary as a minimum to facilitate the effective supervision of branches under MiFID.

CESR, together with the IIMG and European Commission ought to consider what is legally necessary, in terms of the equivalence of powers across the supervisory community, to bring about a solution under MiFID where the delegation of supervisory responsibilities becomes a reality. **To make true progress on the objective of converging supervisory practices, the delegation of supervisory responsibilities and tasks must be given greater attention.**

Likewise, and more generally, **it is important to ensure that Level 3 Committees' decision-making processes are appropriate for the particular Level 3 task concerned.** The EBF takes note of the possibility for CESR to use qualified majority voting for the agreement of Level 2 advice, but advises that such decision making techniques would not, at this stage, be appropriate if read across to Level 3 supervisory convergence work, given the consensual nature of supervisory co-operation in conduct of business regulation.

22. Which aspects of CESR's legal and institutional framework do you think the EU institutions and Member States should further improve and why?

Open answer:

Our overall conclusion is that the Lamfalussy framework as a whole represents **a major improvement on the previous situation**. It provides quite a flexible framework for achieving its objectives within which evolutionary "learning by doing" will improve

matters further.

The Lamfalussy Process is still relatively new. Without doubt, challenges and indeed some difficulties, have arisen for market practitioners in practice but, we cannot identify how a legally based, more prescriptive, or centralised approach to Level 3 tasks would have been an improvement.

Market practitioners with experience of the four pieces of financial markets legislation subject to the full Lamfalussy Process conclude therefore that **the full benefits of the Process have not yet had the chance to come to fruition and experience of the Process' strengths and weaknesses continues to build.**

CESR must take credit for its pioneering role in developing the Lamfalussy Process and for leading the EBF to this rather favourable conclusion.