

Response to

CESR'S CONSULTATION PAPER

Preliminary Progress Report

Which Supervisory tools for the EU securities markets?

Ref: (CESR / 04 – 333f)

The Committee of European Securities Regulators (CESR) published, for a round of consultation, a Paper (Ref: CESR/04-333f) containing an analysis of the new challenges for regulators in the post-FSAP phase and possible solutions.

This Consultation Paper describes the different achievements in the integration of markets, securities, issuers and other market players from an economic and regulatory point of view. The increased integration requires a new approach in the supervisory activity and gives to CESR new co-ordination tasks.

Being thankful for the opportunity to comment on the CESR's advice, we report our comments.

From a general point of view we agree with the analysis of the scenario concerning the economic and regulatory integration achieved under the FSAP and with the need to define the new tools to improve the effectiveness of the supervisory activity in the actual framework and in the near and medium term future.

In particular the action of the network of regulators is now facing new challenges coming from the increased integration that will require to regulators a more strict co-operation and a deeper reliance between each others. For this we agree on CESR proposal to improve the efficacy of Level 3 as well as to improve the supervisory convergence, the enforcement co-ordination and the decision making convergence between regulators.

In addition to that we want to stress that the co-operation and the reliability between regulators can be improved giving more transparency to the co-operation processes in which the different national regulators are involved in the cross-border supervisory activity (for example when a national supervisor is conducting investigations on request of another supervisor). This will allow a reciprocal control on the intensity of the action performed by each supervisor on the process activated by other supervisors, it will give a reciprocal disclosure on the accuracy in the management of the process and it will discourage nationalistic approach.

To achieve such transparency we find it would be useful to improve the use of MOU between supervisors, in order to clearly define how cross border requests are

managed, within which deadlines, indicating who is the person in charge of the process. We also believe that the quality of supervisor co-operation could be improved disclosing on a regular basis the quality of result of the processes (reputation effect).

We also would like to point out that the reliance between market players and regulators is very important in order to avoid that the some services will be provided under different level of supervisory intensity and consequently with different costs, creating regulatory arbitrage opportunities.

For instance, from a regulated market point of view, the new possibilities given by MIFID can bring to a competition between subjects (regulated markets, MTFs, or investment companies internalising trades) located in different countries under different supervisor authorities. Whenever the competition is played under different level of supervisory intensity it can be won by subjects who operate in countries where the controls are lower because they can work with higher margin or with lower costs of compliance.

The different level of supervisory intensity would have as a consequence a lower quality of the service done by the all the subjects (regulated markets, MTFs and investment firms internalising the trader).

To avoid this we believe that the intensity of the supervisory activity must be harmonised versus the highest standard of controls and we support CERS program oriented to achieve this objective and the tools described to achieve the harmonisation of the supervisory activity.

Going forward looking at the new challenges raised by the increased integration on the multi-national players, market operators performing multi-national services/products (or who have in place agreements with other foreign market operators) are going to face a double issue:

- ✍ a multiplication of controls (home/host controls or multiple home country controls), to be prevented considering the related double costs and time inefficiencies;
- ✍ an absence of coherence in the approach of different regulators, with the related possibilities of arbitrage between regulations.

We believe that the above issues can be mitigated improving supervisory tools and within a deeper co-ordination between regulators but unlikely the existing mutual recognition of the activity performed by regulators and the co-operation between them will provide an effective supervisory activity.

Having said that, given the increasing number of multi-national players, we believe that a clear and costs efficient supervisory activity, in a medium – long term perspective, could follow three steps:

- first: the improvement of CESR role in Level 4 in Lamfalussy process. The Level 4 should be upgraded for the realisation of the *level playing field* by national regulators and the CESR should deepen its monitoring activity on how the

- national regulators are implementing new rules and should arrive to have a role of supervisor of the supervisory activity nationally performed;
- second: the *lead regulator*, chosen between the existing national regulators, who, within a project, would co-ordinate the action of the different national regulators and would have power to take decisions. The implementation of this model is going to be possible through a delegation of decision making responsibilities from national regulators to the *lead regulator* on a case by case basis;
 - third: the *single EU regulator*, in charged of the full supervisory activity.

The implementation of this medium – long term program has to be evaluated taking into account the related political issue and the required changes in the existing legislative system.

We trust that CESR will find our comments useful in their analysis. We remain at disposal for discussion and we look forward to further good co-operation.

Milan, February, 11th, 2005