



Irish Association
of Investment
Managers

IRISH ASSOCIATION OF INVESTMENT MANAGERS

Response to CESR's Consultation Paper Ref CESR04 – 104b: The Role of CESR at “Level 3” under the Lamfalussy Process

Dear Sirs,

I am writing on behalf of the Irish Association of Investment Managers, which is the representative body for institutional investment managers in Ireland, to express our views on the above consultation paper.

We very much welcome the opportunity to provide CESR with our thoughts in relation to its proposed role at level 3 of the Lamfalussy Process and feel that this role will be of paramount importance in ensuring fairness, proportionality and consistency in the context of a single EU regulatory framework.

At a general level, we welcome the overall approach that CESR has outlined in the documents that it has published in this regard and feel, in particular, that the language used in this consultation paper conveys a sense of purpose and constructiveness. Specifically, we note with approval the focus indicated by the liberal usage use of words such as “guidelines” and “recommendations” rather than rules.

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

We welcome the role of CESR in respect of the coordinated transposition and application of EU law. However, in our view, any guidelines issued by CESR should be principles-based and the detailed measures to come into force at national level should remain within the remit of the local national regulator.

We would strongly agree with the role of the Review Panel in carrying out collective (peer) reviews and with the public availability of such peer reviews. We see this as an important tool in ensuring the coordinated implementation of EU financial services regulation. We also welcome the proposal that CESR members be given rulemaking powers in order to allow for specific national issues to be dealt with by the national regulator concerned.

Q.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?

We would propose that direct contact between CESR and interested parties/financial services industry to ensure that the views of the industry are taken into account prior to the transposition and application of EU law as part of the Level 3 process. This could be achieved through the use of industry surveys, consultations etc. The views of industry are essential in ensuring that matters specific to each national industry are taken in account prior to the implementation of EU law and should facilitate the adoption of workable and robust measures.

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

CESR could also play a role in ensuring the consistency of application of EU Law by canvassing the opinions of Industry participants in relation to the appropriateness and fairness of transposition. Please also see responses to Q.2 and Q 6.

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

We would broadly agree that CESR does have such a role to play. However, we would have a slight reservation in relation to the extent of any CESR role in this regard as certain products or services could possibly have a more local scope. In this regard, CESR may seek to pronounce on local issues without having access to full relevant information at a domestic level.

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

Yes, we feel that this may be appropriate to seek the additional force that Commission endorsement would provide. However, we imagine that such endorsement should be sought comparatively rarely. Furthermore, endorsement by the Commission should be prefaced by consultation between the Commission and interested parties, including those outside the industry, that may have

valuable perspectives on aspects not considered by CESR. Please also see response to Q.6.

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

We would recommend that CESR's activities be strengthened further in order to ensure the consistent application of EU directives/regulations. We suggest that CESR is the appropriate body to carry out the following activities:

- Database of enforcement cases

In the event of an enforcement notice being issued against a firm, national regulators should be obliged to consult CESR's database of enforcement cases. This would, in our opinion, help to ensure that national regulators thoroughly rationalise their decisions and ensure that their decisions are consistent with their own previous decisions and those of other national regulators. Further, we would suggest that if a firm is to be fined or disciplined in any way, the firm's response to such a decision by the national regulator should be held on the same database of enforcement cases so that the firm's perspective on the matter is available for review.

- Appeal Mechanism

We are of the view that an appeal mechanism, similar in principle to an ombudsman arrangement, should be established under the remit of CESR. Upon the establishment of this appeals mechanism, firms of the view that they have had an unfair treatment at enforcement, would be able to make an appeal to such an ombudsman prior to the national regulator filing its report on the firm or finalising its sanction measures. This could form part of the proposed mediation mechanism.

Q.7 What kind of mediation role do you consider would be appropriate for CESR?

In the event of firm(s) disagreeing with its national regulator's interpretation of a regulation, prior to its transposition into national law, we would see a role for CESR to play in mediating between the complaining firm(s) and the national regulator. Please also see response to Q. 6.

Q8. Do you have any comments on the catalogue of all mutual recognition and cooperation obligations under the Directives where CESR is active?

We have no material comments in this regard.

As a concluding point, we are of the view that, in formulating its approach at Level 3, CESR should facilitate the continuation of “principles-based” regulation where appropriate by domestic supervisory authorities.

Ann Fitzgerald
Secretary General
Irish Association of Investment Managers

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