



Ref.: CESR/03-174b

**INTERIM REPORT ON THE ACTIVITIES OF
THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS
TO
THE EUROPEAN COMMISSION
AND SENT TO:
THE EUROPEAN PARLIAMENT
THE EUROPEAN SECURITIES COMMITTEE**

JULY 2003



The present interim report aims at providing half year information on the activities of the Committee of European Securities Regulators (CESR) to the European Commission, the European Parliament and the European Securities Committee. The report focuses on the functioning of CESR, the “Level 2” work where CESR provides advice to the EU Commission on possible implementing measures of Directives, the “Level 3” work where CESR Members work together to ensure convergence of their regulatory and supervisory tasks and finally, provides an indicative timetable of the CESR work plans.

1. The Organisation of CESR.

1.1. New Observers

An invitation to join CESR meetings as observers was sent to the Candidate Accession Countries at the end of 2002. This should facilitate integration and ensure it is both quick and efficient. The following eight Authorities of the Candidate Countries joined CESR in 2003 with observers status: the Cyprus Securities and Exchange Commission; the Czech Securities Commission; the Estonian Financial Supervision Authority; the Hungarian Financial Supervisory Authority; the Lithuanian Securities Commission; the Malta Financial Services Authority; the Slovakian Financial Market Authority; the Slovenian Securities Market Agency. These Authorities are now participating in the discussion, both at the level of CESR meetings and of Expert Groups.

1.2. Secretariat

In order to perform an increasing number of tasks, the CESR Secretariat was strengthened with the recruitment of new permanent and seconded staff. Staff working in or for the CESR Secretariat will amount to around 15 people by the end of 2003. At this juncture, job opportunities were limited to employees of members in order to preserve the spirit of the network. A programme of internship, on a country rotation basis, has been launched to offer stage opportunities for personnel from members and observers.

1.3. Audited accounts and new Budget

CESR 2002 accounts, audited by Grant Thornton International, were approved at the March CESR meeting. The Budget for 2003 has been significantly increased by Members (33%), up to 2 million Euros.

2. The activities of CESR under the “Level 2”.

2.1. Advice to the EU Commission on implementing measures of the Market Abuse Directive

The *Expert Group on Market Abuse*, chaired by Stavros Thomadakis, Chairman of the Hellenic Capital Markets Commission, continued its work for delivery of the technical advice to the European Commission for the implementing measures under the recently adopted Market Abuse Directive (2003/6/EC). Member States will be implementing the Directive during the course of 2004, and to ensure proper implementation, the Directive requires additional technical implementing measures to be adopted by the EU.

After having transmitted the final technical advice under a first set of mandates from the European Commission (Ref. CESR/02-089d, coupled with a feedback statement on consultation), CESR published for public consultation a document to seek comments on the advice that CESR proposes to give to the European Commission on a number of other implementing measures under a new set of mandates. The Expert Group has been assisted by the Consultative Working Group (the “CWG”)



established under the terms of CESR's Public Statement of Consultation Practices (Ref: CESR/01-007c) and, in developing its advice on inside information for commodity derivatives, by an ad hoc group of market experts. On this specific item a very fruitful contact took place with the US Commodity Futures Trading Commission (CFTC).

The new mandates received from the EU Commission were published on the CESR web site, together with a Call For Evidence (Ref: CESR/03-037), inviting all interested parties to submit views on the issues which CESR should consider in its advice to the Commission.

Areas covered under these mandates:

- *Accepted market practices:* the Directive provides that when a market practice is legitimate and accepted by the competent authority, then the practice may not amount to market abuse. CESR proposes that the technical implementing measures should only focus on principles and the process by which practices are accepted.
- *Inside information in commodity derivatives markets:* the Directive recognises that there needs to be a different approach as regards inside information on commodity derivative markets. CESR's advice focuses on price, transaction and contract information together with information on the underlying markets. However, in all cases the information varies according to the type of commodity market.
- *Insiders' lists:* the Directive requires all issuers and third parties acting on their behalf or for their account with access to inside information to draw up lists of insiders. CESR proposes that those concerned should maintain lists of persons with access to inside information together with permanent lists of those who have regular access to inside information. These lists should be updated on a continuous basis to ensure that they are always current.
- *Disclosure of transactions:* the Directive requires those in managerial positions within an issuer to disclose dealings in the shares of the issuer. CESR proposes that this obligation should cover members of the administrative, management or supervisory boards of the issuer together with senior managers having similar decision making capacity within the issuer.
- *Notification of suspicious transactions:* the Directive requires intermediaries to notify the competent authority of transactions that they suspect of being abusive. CESR proposes that notification should occur once suspicions are aroused. These persons need not have any evidence. The notification obligation has to be fulfilled if the person professionally arranging transactions has sufficient indications that the transaction might be abusive. Notification can be done by any means and confirmation can be provided in writing at the request of the competent authority.

The final advice along with a Feedback Statement on the consultation will be submitted to the Commission on 31 August 2003.

2.2. Advice to the EU Commission on implementing measures of the Prospectus Directive

The *Expert Group on Prospectuses*, chaired by Fernando Teixeira dos Santos, Chairman of the Portuguese Securities Market Commission, continued its work for delivery of the technical advice to the European Commission for the implementing measures under the Prospectus Directive.

CESR received the following provisional mandates from the European Commission:

- on 27 March 2002, the Commission published its provisional request for CESR to provide technical advice on possible implementing measures on the Prospectus Directive;
- on 7 February 2003, the Commission published an additional provisional mandate.

CESR has to deliver its technical advice under three different deadlines: 31 July 2003, 30 September 2003 and 31 December 2003 (a chart explaining the three steps for delivery of CESR advice is given in the Annex). The Expert Group has been assisted by the Consultative Working Group (the "CWG")



established under the terms of CESR's Public Statement of Consultation Practices (Ref: CESR/01-007c).

The Expert Group is currently working in parallel with the following three deadlines.

2.2.1. Submission to EU Commission by 31 July 2003

Technical advice is sought on:

- *Disclosure obligations*: schedules for shares; bonds; asset backed securities; schedules for certain types of issuers; credit institutions registration document; wholesale debt registration document; schedule for depository receipts;
- *Incorporation by reference*,
- *Publication of the prospectus*: availability of the prospectus; content of the notice and methods of publication.

The Expert Group has already produced two consultative papers on these topics. The final version of the draft advice and feedback statement has been recently published for a final round of consultation with market participants. A public hearing was held in Paris on 27 May with a period for written comments. The final advice will be submitted to the EU Commission by the end of July.

2.2.2. Submission to EU Commission by 30 September 2003

Technical advice is sought on:

- *Disclosure obligations*: derivatives; offering programmes; securities issued by collective investment undertakings of the closed-end type; securities building block on underlying for equity securities; wholesale debt securities note;
- *Format of the prospectus*: prospectus as a single document including the summary; base prospectus and supplement; offering programmes and mortgage bonds issues;
- *Annual Information*: method of publication for document containing or referring to "annual information" (article 10 of the directive);
- *Road Map*: interaction between schedules and building blocks.

The Expert Group has elaborated a consultative paper, published on 12 June 2003 for a 2 month consultation. An open hearing and a meeting with the Consultative Working Group that advises the Experts Group are scheduled for 9 and 10 July. The final advice along with a feedback statement on the consultation will be submitted to the EU Commission at the end of September.

2.2.3. Submission to EU Commission by 31 December 2003

Technical advice is sought on:

- *Disclosure obligations*: additional information to be provided where the financial information of issuers incorporated in a non-EU Member State if it does not give a true and fair view or an equivalent standard; schedules for sovereign issuers and municipalities;
- *Advertising*: possible implementing rules concerning the dissemination of advertisements.

Factual information

- Advertisement practices and relevant legislation in the Member States;
- Exemption from the obligation to publish a prospectus in case of a merger or take-over: analysis on interpretation of the notion of equivalence;
- Equivalence of prospectuses drawn up in third countries: legislation and practices on third countries' prospectuses.

The Expert Group has already started working on the advice that has to be submitted to the EU Commission. A consultative paper will be published by the end of July for a 3 month consultation.



2.3. Possible implementing measures of the proposed Investment Services Directive

Given the amount and extent of provisions of the proposal for reviewing the Investment Services Directive (93/22/EEC), on which CESR might be asked to deliver its technical advice, the Committee decided to set up an efficient and sound organisation to address all these issues, in order to meet the deadline given by the EU Commission.

Three different areas were identified, requesting different regulatory and supervisory competencies and technical background: cooperation and enforcement, intermediaries and markets. Therefore three different Experts Groups were established one for each specific area; the work of the three groups will be coordinated by a *Steering Group*.

The groups will start their work subject to the timetable set by the EU Commission. Some preparatory fact finding work is currently being conducted by the three groups to be able to promptly address mandates, once received from the Commission.

3. The activities of CESR under the “Level 3”.

3.1. The CESR-ESBC Working Group on Clearing and Settlement

In the first half of 2003 the *CESR/ESCB Working Group*, jointly chaired by Eddy Wymeersch, Chairman of the Belgian Commission Bancaire et Financière and Jean-Michel Godeffroy, Director General of the ECB, proceeded working to strengthen and improve the CPSS/IOSCO recommendations and upgrade these into standards, adapted to market practices pertaining to the activities of clearing and settlement in the European environment. In this respect the Working Group kept a keen eye on other simultaneous international initiatives (e.g. European Commission, Giovannini Group and G-30). The objectives of the Working Group are among others: to enhance the safety and efficiency of securities settlement systems and to promote the competitiveness of European markets by fostering efficient structures and market-led responses to developments.

The main areas of discussion in the Working Group relate to: the ways a functional approach can be consistently applied, the scope of application of the standards according to their main functions (such as CSD's/ICSD's and/or other entities, operating systematically relevant systems i.e. custodians), the methods and required levels of risk-mitigation and coordination of the supervision and oversight among the different authorities involved.

Furthermore, in the first half of this year, a Consultative Working Group was established by the CESR-part of the Working Group. A first, fruitful meeting with market participants was held in April. In that meeting there was broad support for a functional approach among market participants although implementation reveals the complexity of the issue.

Approval of the final draft of the consultation paper by the CESR Chairmen and by the Governing Board of the ESCB is expected in their respective meetings at the end of July. The consultation period is foreseen from the end of July until the end of October.

3.2. The “Review Panel” and the implementation of CESR Standards

In December 2002 CESR decided to establish a *Review Panel*, which has the role of assisting CESR in its task of ensuring more consistent and timely implementation of Community legislation in Member States as decided by the Stockholm Council resolution of March 2001. The Panel is the middle-step in the implementation process; it intervenes after the self-assessment conducted by members and before the final assessment and publication by CESR.

The Panel will first monitor the implementation-process of *CESR Standards on Investor Protection* (CESR/01-014d and CESR/02-098b) and *ATS* (CESR/02-086b). Two correspondence-tables (one



for each set of standards) were circulated to collect responses on the status of implementation of these Standards across Europe.

3.3. Seminar on Market Volatility

A one day *Seminar on Market Volatility* was organised on 28 April 2003 in Paris. The seminar was chaired by Jean-François Lepetit, Chairman of the French COB, and was attended by representatives of CESR members, the European Commission, the Financial Stability Forum, IOSCO and Professor Olivier Pastré (University of Paris).

There was a common view that some further work on this subject is needed. In particular, there is a need to have more in depth academic research concerning volatility in recent years. As regards changes in market structure, more should be known about the roles of different market participants and the effects of "passive management". Furthermore, additional information (to regulators and markets) on positions in the market would be welcomed, but this requires further analysis as to what would be the content of such information and what would be the benefits compared to costs involved. The general feeling was also that some work could be done concerning the activities of hedge funds. Participants in the seminar agreed that CESR should wait for the work carried out by the Joint Forum (review of the Fisher Group's recommendations) and the initiatives of the US SEC.

3.4. European Convention on Human Rights

Given the possible impact of case-law by the European Court of Human Rights on the functioning of securities regulators, a dedicated project was established by CESR in 2002 with the aim to share legal experience among CESR members. An ad-hoc meeting devoted to this subject was held last December, chaired by Arthur Docters van Leeuwen.

The focus of this project is on the relevance for regulators of article 6 (right to a fair trial) and article 8 (right to respect for private and family life) of the Convention.

4. The activities of the permanent Groups.

4.1. CESR-POL

CESR-POL presented its annual report to the chairmen's meeting in March. The annual report focused on the progress that has been made on the various strands of work that CESR-POL is pursuing. A focus of the work of CESR-POL will be the second review of the operation of the CESR Multilateral Memorandum of Understanding ("MoU"). Such an operation is a key part of the mandate of CESR-POL as set out in the MoU. It was first undertaken in 2000, where members decided that future reviews should encompass a period of two years. To date, data on requests for information for the years 2001 and 2002 has been gathered and compiled. The analysis of this data is currently underway.

The members of CESR-POL have three distinct aims in this exercise. First, to identify any need for change in the MoU or in its operation, second, to review whether the implementation of the action plan for financial services requires any change in the MoU, and third, to identify any further need for European legislation in the area of cross-border co-operation and enforcement.

4.2. CESR-FIN

The first *Standard on Financial Information* (Ref: CESR/03-073) was approved by CESR in March. The standard represents a significant part of CESR's contribution to the task of developing and implementing a common approach to the enforcement of International Financial Reporting Standards in Europe.



5. Other main activities.

5.1. The response of CESR to the “Oviedo mandate”

Following the request from the informal Ecofin Council held in Oviedo on April 2002, CESR sent a letter to the Ecofin on hedge funds and market volatility.

5.2. The regulatory dialogue with the US SEC

CESR and the US SEC started conducting an initial dialogue in order to:

- Compare of agendas on regulatory initiatives and identify areas where difficulties may emerge;
- Facilitate the reciprocal exchange of information for enforcement.

6. The near Future.

6.1. Seminar on Investor Education

A *Seminar on Investor Education* will be held on 11 July in Madrid. The Seminar will be chaired by Blas Calzada, Chairman of the Spanish Comisión Nacional del Mercado de Valores (CNMV). The key objectives of the seminar will include:

- Sharing experience on:
 - Areas of particular interest for investor education and information;
 - Key investor protection messages;
 - How to facilitate investors’ access to relevant information.
- A discussion to explore whether the CESR network might assist Member experts in achieving their objectives in relation to investor education in their jurisdictions and if so, how.

6.2. Indicative CESR Work Plan for Second-half 2003

11 July

- Seminar on Investor Education

31 July:

- Deadline for submission of first technical advice on Prospectus
- Launch public consultation on Clearing and Settlement
- Launch public consultation on third technical advice on Prospectus

31 August:

- Deadline for submission of technical advice on Market Abuse

30 September:



- Deadline for submission to the Commission of second technical advice on Prospectus
- Provisional mandates from the Commission under the ISD2
- Follow-up to Commission's initiatives on transfer of competences to ESC/CESR on UCITS
- Deadline for comments on consultation on clearing and settlement

31 December:

- Deadline for submission to the Commission of third technical advice on Prospectus
- Provisional mandates from the Commission under the Transparency Directive

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Complete information and all documents published are available on the CESR Website www.europefesco.org.



Annex

MANDATE		WORK TO BE DONE BY CESR PROSPECTUS GROUP			
DELIVERY TO EC	CONSULTATION	NEXT DEADLINE FOR DRAFTING SUBGROUPS	NEXT DOCUMENT	CONTENT (references are made to EC Additional provisional mandate 31/1/03)	MEETINGS
31 July	Already consulted twice (Oct and Dec 2002). Everything already published again for Open Hearing 27 May. Written comments until 16 June	30 June	Draft Technical Advice and Feedback Statement to be approved by Chairs on July 25th meeting in Helsinki	<p>3.2 Minimum information Shares; bonds; ABSs; specialist issuers; credit institutions RD; wholesale debt RD; depository receipts.</p> <p>3.4 Incorporation by reference</p> <p>3.5 Publication of the prospectus Availability of the prospectus; content of the notice and methods of publication</p>	<ul style="list-style-type: none"> - Meetings of drafting subgroups to be convened if necessary to assess the responses between 17-27 June - Full group on 10 July afternoon and 11 July to approve the Draft Advice
30 Sept	CP will be published by 12 June 2003. Consultation ends on August 12	8 September	Draft Technical Advice and Feedback Statement to be approved by Chairs on September 29 th meeting in Paris	<p>3.1 Format of the prospectus Prospectus as a single document including the summary; base prospectus and supplement; offering programmes and mortgage bonds issues.</p> <p>3.2 Minimum information Derivatives; offering programmes; securities issued by collective investment undertakings of the closed-end type; SN building block on underlying for equity securities; wholesale debt SN.</p> <p>3.3 Annual Information Method of publication for document containing or referring to “annual information”</p> <p>Road Map Interaction between schedules and</p>	<ul style="list-style-type: none"> - Open hearing 9 July afternoon - Meeting with Consultative Panel morning 10 July - Meetings of drafting subgroups could be necessary after open hearing and meeting with CWG. - Since end of consultation (August 12) until 5 September, meetings will take place to produce draft TA and FS. - Meeting of the full

MANDATE		WORK TO BE DONE BY CESR PROSPECTUS GROUP			
				building blocks.	group on 15 (afternoon) and 16 September to approve draft TA and FS
31 Dec	CP will be published by end July 2003. Consultation finishes at the end of October	30 June	Consultation Paper to be approved by Chairs on July 25 th Helsinki	<p>3.2 Minimum information</p> <ul style="list-style-type: none"> - Annex of Financial Information referred to in item 20.4 of Annex A and item 13.1 of Annex D of document CESR /03-066 (b) and on item 11.3 of Annex 1, item 20.3 of Annex 2 and item 11.3 of Annex 3 of document CESR/03-128 - Schedules for sovereign issuers and municipalities <p>3.6 Advertising</p> <p>Possible implementing rules concerning the dissemination of advertisements</p>	<ul style="list-style-type: none"> - Meetings of drafting subgroups to be convened to produce the drafts between 17-27 June - Factual information to be collected in relation to advertising and Draft CP to be produced by the end of June - Full group 10 July afternoon and 11 July to approve the CP - Meeting with CWG on 15 September (morning)
	Not need to be consulted		Document describing factual information to be approved by Chairs on December 11/12 Dublin	<p>3.6 Advertising</p> <p>Factual information regarding advertisement practices and relevant legislation in the Member States</p> <p>4.1 Exemption from the obligation to publish a prospectus</p> <p>Factual information and analysis on interpretation of the notion of equivalence (mergers and take-overs)</p> <p>4.2 Equivalence of prospectuses drawn up in third countries</p> <p>Factual information on legislation and practices on 3rd countries' prospectuses</p>	