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Press Release

The Role of CESR at “Level 3” Under the Lamfalussy Process

Following consultation, CESR publishes today a paper (Ref. CESR/04-527) and a summary of responses (Ref. CESR/04-349) establishing how CESR intends to play its full part in ensuring that there is greater consistency and convergence across Europe in the day to day application of European financial services legislation.

As the European Union reaches the final stages of an ambitious programme to modernise Europe’s Financial Services Legislation, with the ultimate goal of ensuring the single market in financial services is realised, the ability of regulators to fulfil their part in working towards the realisation of this objective becomes more critical, particularly as consumers will need to be sure that they receive equivalent levels of protection across Europe and, companies will need to know what they can expect in terms of day to day supervision and that there is a level playing field across Europe.

This paper clarifies the general principles covering level 3 in order to ensure real consistent implementation and application of EU securities market legislation, the maintenance of orderly markets and other relevant rules and analyses which activities CESR could further explore at level 3 and describes the arrangement and provisions that CESR has already made.

At present, CESR is working towards the fulfilment of this objective by producing administrative guidelines, interpretative recommendations, common standards, peer reviews, comparisons of regulatory practice to improve consistent application and enforcement of EU legislation or the CESR standards concerned.

The paper seeks to clarify **the role of CESR standards and guidance**. In particular, CESR notes that whilst supervisors across Europe could carry out their functions without co-ordinating with each other, this could lead to very different applications of the same legislation to specific and comparable cases. As such, it is clear that greater co-ordination is valuable if the single market is to function effectively. Given that this co-ordination should take place it seems only appropriate that this should be done in a transparent manner, hence, the development of standards. However, to ensure these standards are efficient and effective, it seems only appropriate to consult those affected by the implementation of those standards and therefore involve them in what would otherwise be a ‘supervisor to supervisor’ process.

Furthermore, the paper sets out the existing Level 3 functions, which fall into three categories, and the paper sets out examples of work undertaken in each of these modes: the first of these modes being, co-ordinated implementation of EU law, the second includes regulatory convergence and the third includes supervisory convergence and proposes new functions in relations to each of these. Following a consultation and hearing, CESR received strong endorsement for a number of key proposals to extend its work under Level 3 in a number of ways and these are highlighted diagrammatically in blue (see page 3)

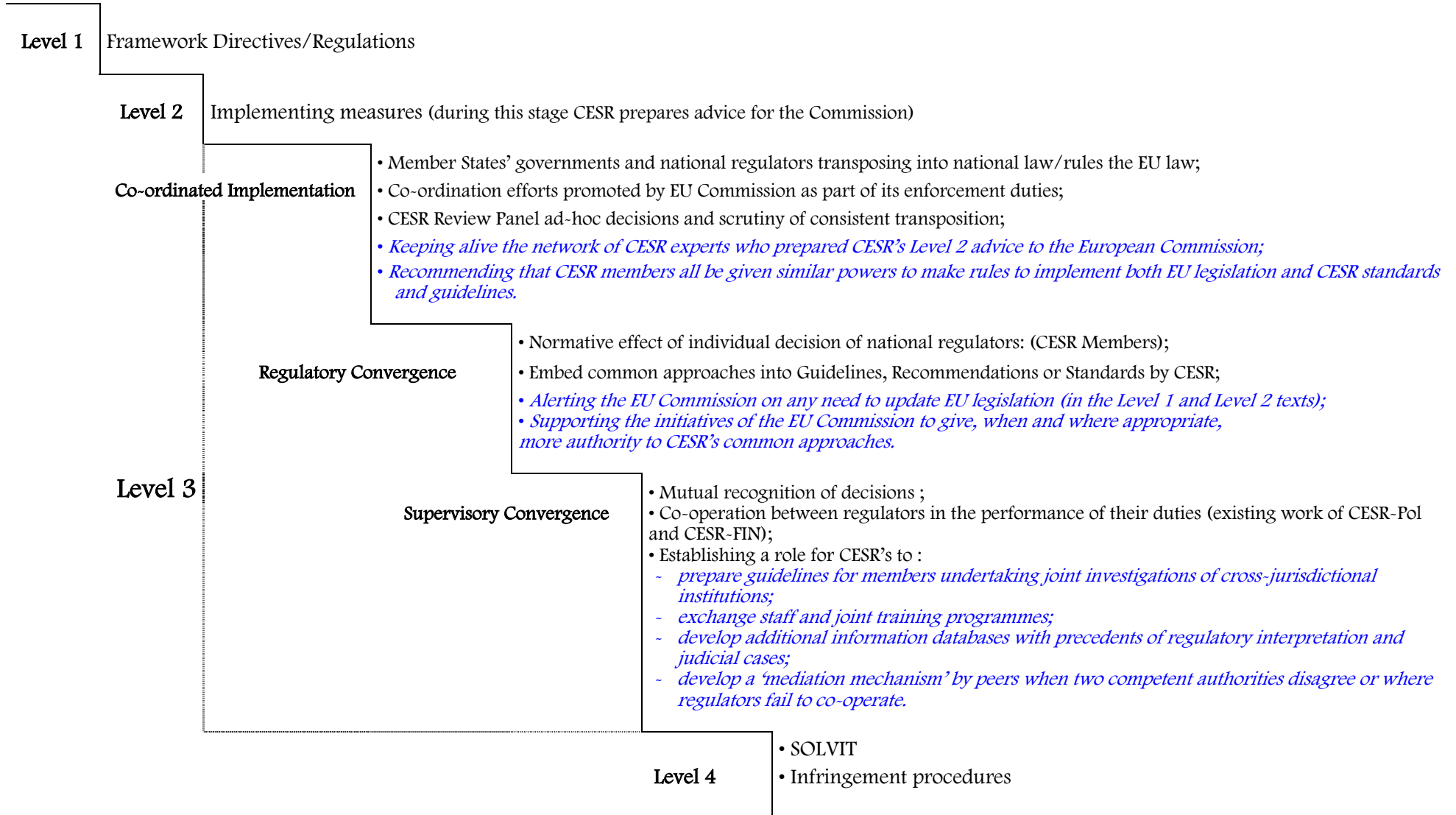
One such new function that CESR will put in place as part of its Level 3 functions is **a mediation system amongst regulators to solve conflicts between national securities regulators**. This proposal was strongly welcomed by market participants during the consultation and by the Inter-Institutional Monitoring Group. This mediation mechanism will be useful in the mutual recognition of decisions from the Home competent regulator by the Host competent regulator(s) (e.g. licenses of intermediaries and regulated markets, approval of prospectuses or UCITS), where the Directives are drafted in a manner that mutual recognition is an increasingly automatic procedure. Up to now, where the Home and the Host competent regulators (or two Host competent regulators) disagree as to how a Directive should be applied, the normal procedure would have been to refer the case to the European Commission, or even to the European Court of Justice (ECJ), if the matter required an official interpretation of the relevant Directive. However, in order to have more rapid and a less costly solution, CESR will start putting in place a “mediation” mechanism by peers (other members of CESR) which will seek to provide an acceptable solution for specific cases. This will need, of course, to work in accordance with the speed



of markets and, therefore in most cases, would intervene *ex post*. CESR notes, however, that the existence of a “mediation” system should not be regarded as an incentive to systematically question the increased ‘automaticity’ of mutual recognition. In addition, any mediation system would have to respect, in particular, confidentiality and business secrecy obligations. Finally, any CESR mediation activity that is developed should not overlap with the Commission’s enforcement competences.



Annex 2: Level 3 Framework in context and new proposals (in italics)





Note to Editors

1. The role of regulators in working towards the realisation of convergence in supervisory practices was recognised by a Group of ‘Wise Men’ who proposed in June 2001 a new legislative approach for the revision of Europe’s securities legislation, at the request of the Europe’s Finance Ministers and which following approval by the European Parliament was introduced into the European Union’s decision making processes. This established what is commonly known as the ‘Lamfalussy Process’. This created a four level approach to the application of EU Financial Services legislation and established a role for CESR members to contribute to this legislative process both, in what is known as Level 2 of this process, where regulators are asked by the European Commission to provide advice during the development of EU legislation (known as technical implementing measures). And, in Level 3, which concerns a strengthened co-operation between (national) regulators to ensure consistent and equivalent transposition of Level 1 and Level 2 legislation.
2. The Lamfalussy process defines a four level approach which can be summarised very briefly as follows: Level one sets out the high level objectives that the legislation must achieve, through Regulations or Directives adopted in co-decision by the European Parliament and the Council of Ministers. Level two measures, adopted by the European Commission, set out technical requirements necessary to implement level one provisions where foreseen. Level three is intended to ensure common and uniform implementation by the use of common standards, recommendations or guidance agreed amongst regulators in CESR. Level four concerns the enforcement of EU legislation. Page 8 of the Lamfalussy report illustrates diagrammatically how these four levels fit together. It is included as Annex A of the consultation paper on page 11.
3. The Lamfalussy framework envisaged an active role for CESR in the field of common and uniform implementation of EU legislation. In particular, the Lamfalussy Report defined the role of CESR under the Level 3 as follows:
 - To produce consistent guidelines for the administrative regulations to be adopted at the national level;
 - To issue joint interpretative recommendations and set common standards regarding matters not covered by EU legislation – where necessary, these could be adopted into Community law through a level 2 procedure;
 - To compare and review regulatory practices to ensure effective enforcement throughout the Union and define best practice.
4. CESR is an independent Committee of European Securities Regulators. The role of the Committee is to:
 - Improve co-ordination among securities regulators;
 - Act as an advisory group to assist the EU Commission, in particular in its preparation of draft implementing measures in the field of securities;
 - Work to ensure more consistent and timely day-to-day implementation of community legislation in the Member States;
 - The Committee was established under the terms of the European Commission’s decision of 6 June 2001 (2001/1501/EC).

As such it is one of the two committees envisaged in the Final Report of the group of Wise Men on the regulation of European securities markets, chaired by Baron Alexandre Lamfalussy. The report itself was endorsed by the European Council and the European Parliament. The relevant documents are available on CESR’s website.

5. Each Member State of the European Union has one member on the Committee. The members are nominated by the Member States and are the Heads of the national public authorities competent in the field of securities. The European Commission has nominated the Director General of the DG Market, as its representative. Furthermore, the securities authorities of Norway and Iceland are also represented at a senior level.

6. For further information please contact:

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