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Methodology for Self- assessment and Peer Review Tool

1. In accordance with Article 4.3 of the Charter of the Committee of European Securities' the final results of the peer review are submitted for approval to CESR. Documents to be published on the CESR website, after approval by CESR, include the correspondence tables, tick boxes and the Review Panel's report to CESR. Should any suggestions for ways of achieving full implementation be published, comments of the CESR Member, to which suggestions relate, are included, if so requested by that CESR Member.
2. In accordance with Article 5 of the Review Panel Protocol (the "Protocol"), this document sets out the methodology for the Self-Assessment and Peer Review Tool which is to be used for the purposes set out in Article 2 of the Protocol.
3. The self-assessment is always conducted. However, in some cases, a Peer Review of the self-assessment will not necessarily follow.
4. The Methodology's aim is to determine whether the objective of each supervisory provision assessed is sufficiently met in accordance with Article 2 of the Protocol. The aim is also to determine the overall assessment of each CESR Member regarding the whole exercise.
5. The Methodology does not aim to extend or change the scope or nature of supervisory provisions, but, where relevant, to lead to their consistent implementation in each CESR' authority's jurisdiction.
6. This document is divided as follows:
 - A) Self- Assessment and Peer Review Criteria and Benchmarks
 - B) Self- Assessment Procedure and Guidance
 - C) Peer- Review Procedure
 - D) Report to CESR
 - E) Publication Procedure
 - F) Updating of Self- Assessments Procedure
 - G) Reassessment of the updated information

A. Self-Assessment and Peer Review Questionnaire, Criteria and Benchmarks

7. On receipt of the mandate from CESR, the Review Panel starts the self-assessment and/or peer review exercise.
8. For the purposes of conducting a Self-Assessment and Peer-Review exercise, the Review Panel will develop a questionnaire and – if deemed necessary- detailed assessment criteria (the "criteria") for a measure to be reviewed and for the purposes of the overall assessment, where necessary with the input from relevant CESR groups. When developing the questionnaire the parameters of confidentiality for the purposes of the exercise will be established.

9. The criteria form the basis of the benchmarks for the Self- Assessment and the Peer Review. They allow for an objective assessment of: the level of implementation of supervisory provisions in the European Economic Area (EEA) in accordance with Article 2, paragraph 1 of the Protocol.
10. When establishing the benchmarks, the Review Panel should take into account the nature of the supervisory provision and relevant CESR documents.
11. The criteria establishing the benchmarks have to be specified for supervisory provisions in advance of the Self- Assessment and/or Peer Review and have to focus on the key issue(s) addressed by each provision. The criteria could be supplemented by questions that serve as a guidance.
12. The criteria establishing the benchmarks must be as objective as reasonably possible and should permit at least one of the following benchmark categories to be assigned to both the Self-Assessments and/or the subsequent Peer Review:
 - a. *Fully Applied*: A provision under review is to be considered “*fully applied*” whenever all assessment criteria as specified in the benchmarks are met without any significant deficiencies.
 - b. *Partially Applied*: A provision under review is to be considered “*partially applied*” **when some of the** assessment criteria as specified in the benchmarks **are met with some deficiencies affecting the overall adequacy of the application.**
 - c. *Not Applied* : A provision under review is to be considered “*Not applied*” whenever significant deficiencies exist in meeting the assessment criteria as specified in the benchmarks.
 - d. *Not applicable*: A provision under review is to be considered to be “*Not applicable*” whenever it does not apply given the nature the CESR authority’s market.
 - e. *Not contributing*: A CESR authority will be classified as “*Not contributing*” if it had not provided its contribution within the prescribed deadline. In that case, the exercise will continue without the input of this member and the outcome will be published and/ or communicated with a statement that the particular authority has been classified as “*Not contributing*”.

Any single question left unanswered will be considered “*not contributing*” and leads or may lead to a statement of non contribution as regards the overall assessment.

In addition to the above benchmark categories, the Review Panel may in exceptional circumstances create bespoke benchmark categories if considered necessary, which will be established at the commencement of the exercise.

13. The questionnaire and/or the criteria after the approval by the Review Panel are distributed to the CESR members to begin their self-assessment.

B. Self- Assessment Procedure and Guidance

14. In order to be considered sufficient for the purposes of CESR peer reviews, national implementing measures would, in particular cover, laws (i.e. acts of Parliament) and regulations (i.e. decrees of ministries or rule books of regulators), guidelines and circulars of regulators (provided that non-compliance with these guidelines and circulars should trigger enforcement action by the regulator concerned), rules of self-regulatory organisations, such as regulated markets or industry associations (where applied by a significant part of the industry in a specific Member State and provided that non-compliance with those rules triggers enforcement action by the self-regulatory organisation concerned or by the regulator), and relevant case law. Internal procedures followed by regulators that do not trigger enforcement action are also classified as implementing measures for these purposes.

15. The level of detail of the national implementing measure should be equivalent to the level of detail of the provision under review; i.e. a national implementing measure of general scope is only considered as implementing a detailed provision if there is clear indication that other national measures (e.g. case law, the regulator's manuals for licensing or supervision, etc.) achieve the same outcome.
16. If a national implementing measure is considered by the relevant CESR authority as going beyond the requirements of the supervisory provision, this fact would be indicated in an appropriate form in the comments' section of the self assessment. As regards the assignment of one of the categories of benchmarks in such cases, this has to follow a case-by-case approach taking into account considerations, such as the level of harmonisation intended by the supervisory provision in question, its regulatory objective, or compliance with relevant EU law.
17. If a provision has not been fully applied, in the comments section of the correspondence table, in particular, the following have to be stated: the reason for non-application , the action taken so far for application , and the proposed timing of application, if any.
18. If a provision is not applicable, in the comments section of the correspondence table, in particular, the reason for non-applicability of the provision has to be stated.
19. If a national implementing measure is not in force but has already been formally adopted, and a concrete date of its coming into force is stated in the correspondence table, it will be assessed as if it had been in force at the time of the review, provided that the national implementing measure comes into force within a reasonable period of time after the review process has started. This period of time will be established before the commencement of each exercise.
20. The principle for completing the correspondence tables is that every single column has to be completed, even if the provision has not been applied ("comply or explain" approach).
21. Any derogation from a national implementing measure or any possibility for issuing a waiver from the requirement should be stated explicitly, together with the rationale for any such exemption, and has to be taken into account in the assessment.
22. If a national implementing measure relating to the provision under review is in the process of being drawn up, this has to be stated, provided that the implementing measure is already in a concrete stage (e.g. a proposal to Parliament or publication of a consultation paper).
23. Each CESR Authority will undertake a self-assessment according to this Methodology, respond to the questionnaire and the detailed assessment criteria, if any, within a timeframe agreed on beforehand, and provide the information via the CESR internet tool. (This includes the text of the national implementing measures, in English version if available.) When an English version is not available, the answer should describe the relevant implementing measure in English. ¹
24. The CESR Secretariat will question individual CESR Authorities as to the completeness of their responses in order to achieve an acceptable level of consistency in the self-assessments and if deemed necessary will stipulate that the questionnaire needs to be (redone) within a set timeframe.

1. ¹ For a summary of the issues that the CESR Authority needs to ensure have been addressed in the self assessment – please see the relevant section in Annex A.

25. In addition, the Secretariat will prepare a paper setting out the information that was included in the self assessment and classified as confidential by the relevant CESR Authority for the purposes of Article 11, paragraph 1 of the Protocol. Following this, in the event that there are differences between the agreed categories of information that have been agreed as being confidential as set out in paragraph 8 of the Methodology, the Secretariat will consult the Chair of the Review Panel in order to decide what should be published following bilateral discussion with the relevant CESR Authority.
26. Once completed, the self-assessments (including “tick boxes”) will be made public on the CESR Website and if considered necessary, be accompanied by a report explaining the self-assessment exercise. The results of the self-assessment (including “tick boxes”) will be published before the peer review phase starts. The report reflecting the results will be prepared by the Secretariat, approved by the Review Panel.

C) Peer- Review Procedure

27. A peer review of the provision(s) will be undertaken by the Review Panel (or any subgroup(s) of the Review Panel), assisted by the CESR Secretariat.²
28. When deciding on what to review at this stage, the Review Panel will, in particular, consider any responses received following the publication of the self-assessments and focus its efforts on those areas that raise significant problems in relation to the operation of the Single Market.
29. The Review Panel (or any subgroup of the Review Panel deemed necessary) assesses all jurisdictions jointly and simultaneously according to the same criteria, in order to minimise the risk of uneven or biased results. (Depending on the size of an exercise, more than one subgroup could be established.)
30. The member of the sub-group(s), while the review of its own jurisdiction is in progress, should not participate in this review.
31. Any sub-group(s) prepares a report for the Review Panel, including information as set out in Article 2 paragraphs 6 and 7 of the Protocol. The sub-group(s) receives any explanations by the assessed CESR Authorities and submits the report with the recommendations and explanations received by the assessed CESR Authorities to the Review Panel for consideration

D) Final Report to CESR

32. The findings of a peer review will be reported to CESR in accordance with Articles 2 and 10 of the Protocol. The timeframe for the purposes of Article 10, paragraph 4 of the Protocol is at least two weeks before the CESR meeting to allow the CESR authority, to prepare necessary explanations.
33. In establishing the nature of the contents of the report that is to be reported to CESR, for the purposes of Article 2, paragraphs 6 and 7 of the Protocol, before expressing views on specific problems encountered by individual authorities and recommending ways for achieving full implementation by the relevant CESR Authority, bi lateral discussions on this issue will take place between the Chair of the Review Panel and the Chair of the relevant CESR Authority.
34. In addition, the Secretariat will prepare a paper setting out the information that has been classified as confidential by the relevant CESR Authority for the purposes of Article 11, paragraph 1 of the Protocol. Following this, in the event that there are differences between the agreed categories of information that have been agreed as being confidential as set out in paragraph 6 of the Methodology, the Secretariat will consult the Chair of the Review Panel

2. ² For a summary of some of the issues that will be looked at during the Peer –Review, please see the relevant section in Annex A.



in order to decide what should be published following bilateral discussion with the relevant CESR Authority.

E) Publication procedure

35. The publication of the final results will be made in accordance with article 11 of the Protocol and will include the correspondence tables, which set out the complete response from each CESR authority, and in summary form providing the level of implementation and the comments, tick boxes and the Review Panel final report to CESR once approved. Should any recommendations for ways of achieving full implementation be published, explanations of the CESR Authority to which recommendations relate, are included, if so requested by that CESR authority.
36. Should CESR decide that changes to the final report are to be made which affect the explanations of the relevant CESR authority, amendments to these explanations should be submitted to the CESR Secretariat within two (2) weeks after the CESR meeting in order to ensure that the comments are annexed to the final report upon its publication. In the event that the CESR authority is unable to provide explanations before publication, it will be possible to have the explanations posted on CESR's website alongside the final report after publication.
37. All publications of the Review Panel, as approved by CESR and under the final responsibility of CESR, will be open to comments.

F) Updating of Self- Assessments

38. The information provided by CESR authorities can be updated on a regular basis by making a request to the CESR Secretariat, and specifying what needs to be changed. The Secretariat will open access for such updating, and shall keep a record of what is being updated and when.
39. When updating the responses, CESR Authorities are to follow the procedure provided for in Section B. Once the information is updated and the completeness of it is questioned by the CESR Secretariat, it will be made public alongside with the previous information together with a statement making it clear that the update has not been reviewed by the Review Panel

G) Reassessment of Updated Information

40. Every 3 months the Secretariat will send a report to the Review Panel of all the changes that have been made.
41. Should a number of members update previous self-assessments at the same time, the Secretariat will assess the need to bring forward the discussion with the Review Panel as to the timing of a full reassessment of the updated information.
42. The reassessment of updated information will follow the procedure set out in sections C, D, and E detailed above.

Annex A - indicative list of questions that those completing self assessment (and checking the completeness of response) or conducting a peer review need to consider

NATIONAL IMPLEMENTING MEASURES

Questions 1 & 2 are for both those doing the self-assessment and subsequently the secretariat.

Question 3 – is for those doing the self -assessment and those doing the peer review

Question 4 – is for those doing the self-assessment and those doing the peer review

Question 5 – is for those doing self-assessment and for secretariat to keep note of for updating

1. Is the self-assessment up-to-date and complete?
 - a. Is there a response in each of the columns?*
 - b. Are there any obvious mistakes?*
 - c. Is the response in line with the format required for the Review Panel Website tool?*
 - d. Have the national implementing measures been provided as a link or in hardcopy?*
 - e. In case of up-dating, is there any evidence contradicting the self-assessment of the CESR Member?*

2. Have the national implementing measures been fully and accurately described?
 - a. Is the derogation or any waiver from the full application of a national implementing measure clearly indicated and described?*
 - b. If a supervisory provision is not applied in a Member State, is, in particular, the reason for non-application, the actions so far taken for application, and the timing of application appropriately indicated in the comments' section?*
 - c. Is the level of detail of the national implementing measure equivalent to the level of detail of the supervisory provision?*
 - d. Is the national implementing measure a law, regulation, guideline, circular or rule, to be considered sufficient for the purposes of CESR peer reviews?*

3. Has the national implementing measure exceeded the supervisory provision under review?
 - a. Does the national implementing measure meet the regulatory objective of the supervisory provision?*
 - b. Does the supervisory provision provide for minimum/maximum harmonisation?*

4. What is the implementing authority?
 - a. *When more than one domestic authority is responsible, which implementing authority has responsibility for which national implementing measure?*
 - b. *Do the responsibilities cover the whole supervisory provision?*

5. Are there any planned changes to relevant provisions of national law/implementing provisions?
 - a. *What stage in the legislative process have the changes reached?*
 - b. *When are the changes to be effective?*

MONITORING AND ENFORCEMENT

Question 6 – is for those doing the self- assessment and the peer review
Questions 7& 8 are for those conducting the peer review

6. Is compliance with the national implementing measures monitored and enforced?
 - a. *Is there case law of the national implementing measures, in particular where the national implementing measure has the status of soft law?*
 - b. *Are there any impediments to efficient monitoring or enforcement of the national implementing measures?*
 - c. *What are the sanctions for failure to comply with the national implementing measures and who is responsible for imposing the sanctions?*
 - d. *When more than one domestic authority is responsible, which enforcement body has responsibility for which national implementing measure?*
 - e. *Do the responsibilities cover the whole supervisory provision?*
7. Are the national implementing measures achieving the aims set out in the supervisory provision ('are things working the way they were designed to')?
 - a. *Is there evidence (e.g. case law) that would suggest that the national implementing measures do not achieve the aims set down in the supervisory provision?*
 - b. *What is the reason for this?*
8. Is there any action CESR might need to take with respect to a supervisory provision?
 - a. *Are there elements of a CESR Measure which do not comply with EU law?*



b. Are there several Member States which have legal problems in implementing the supervisory provision?
