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PRESS RELEASE

CESR assesses the extent of equivalence of supervisory powers across Europe under the Market Abuse and Prospectus Directives

The purpose and scope of the assessment undertaken by CESR:

In mid 2006, CESR launched a mapping exercise, through its Review Panel, which assessed the supervisory powers that had been given to CESR Members following the entry into force of the Market Abuse and the Prospectus Directives. The purpose of this study was to assess whether the competent authorities benefit from equivalent supervisory powers. The capacity to act on an equal footing when performing cross-border investigatory, supervisory and sanctioning activities is considered by CESR as a precondition to a credible EU supervisory system and fundamental to delivering supervisory convergence. The findings of these reports have been submitted by CESR to the Financial Services Committee (FSC), which was requested by the ECOFIN (in its Conclusions of 16 May), to monitor the convergence of supervisory powers and ensure that they are at an adequate level. As a compliment to this exercise, CESR published a report on the supervisory functioning of the Prospectus Directive and Regulation (Ref. CESR/07-225) on 12 June, which has also been submitted as part of CESR's contribution to the Lamfalussy Review.

CESR's assessment, however, not only mapped the powers themselves, but also examined how these powers are exercised in practice by the competent authorities (i.e. in their day-to-day application). CESR considers that the mapping of national supervisory practices will contribute to a better understanding between the EU supervisors and will ultimately enhance supervisory convergence as CESR members will compare supervisory practices and try to benefit from each others' best experiences. It will also provide valuable insight as to where further work can be undertaken by CESR to develop common standards (for example, supplementing the Prospectus Q and A already available or developing a second set of guidelines on the Market Abuse Directive) and where this may face limits due to national implementation.

To summarise, the key findings include an assessment of:

- *the attribution of the powers to CESR members:*

The exercise reveals that Member States have granted their competent authorities the powers set out in the Directives. The general degree of equivalence is high (on average 93%), although significant differences still remain in important areas (set out further below). The overall picture is more satisfactory for the Prospectus Directive than for the Market Abuse Directive (MAD). However, this might be explained by the fact that the Prospectus Directive is a maximum harmonisation Directive.

- *the ability to issue practical rules:*

Divergence still exists (i.e. there is less than 85% equivalence), where several supervisors lack the possibility to issue practical rules to properly apply the Directives; in particular with respect to the list of insiders and the notification of management transactions under the MAD or, for example, regarding the determination of equivalent information under the Prospectus Directive.

- *general powers provided to CESR Members apply the Directives:*



As regards the general powers to apply the Directives, the remaining weak points under the Prospectus Directive relate to the capacity to disclose supervisory information to the public (with regard to registering qualified investors and the publication of summaries of prospectuses).

Under the MAD (with regard to disclosure of measures, or sanctions to be imposed due to infringements), authorities are generally well equipped with supervisory, investigative and sanctioning powers, except in some cases. In particular, the greatest divergences exist regarding their capacity to be informed by issuers if there is a delay in the publication of inside information; the possibility to require telephone and data traffic records; to request the freezing and/or sequestration of assets; to request the temporary prohibition of professional activities. Of course, these differences may affect their capacity to cooperate with their EU counterparts.

- *co-operation powers:*

The cross-border supervisory cooperation powers have been significantly harmonised. Nevertheless, some areas of improvement remain; in particular, regarding the capacity to open an investigation solely on a request by a foreign authority.

- *the assessment of supervisory practices:*

Supervisory practices were also assessed. This includes supervisory methods, tools, criteria and the interpretation of general terms of the Directives that leave some discretion to the member states/competent authorities (e.g. “as soon as possible”). In this context, some similarities but also some divergences have been revealed.

Similar exercises will be conducted by the Review Panel in the future in relation to the Transparency Directive and the Markets in Financial Instruments Directive.

The findings of CESR are set out in more detail in the following documents, published today:

- A report submitted to the Financial Services’ Committee (FSC) with attached annexes on this exercise (07-334): This report provides an overview of all the findings set out in the reports below.
- Two correspondence tables: one for the Market Abuse Directive (07-382) and one for the Prospectus Directive (07-385). These illustrate through a tick box approach what supervisory powers CESR Members hold and how they are exercised;
- Two full reports including executive summaries: one describing its members’ supervisory powers under the Market Abuse Directive and relevant implementing measures (07-380) and one describing its members’ supervisory powers under the Prospectus Directive and relevant implementing measures (07-383);



Notes for Editors:

1. These documents (reports, executive summaries and tables) were submitted to the Financial Services' Committee (FSC).
2. The mapping exercise on supervisory powers was conducted by CESR's Review Panel during the course of 2006 with the reports being finalised in June 2007. The exercise started before Bulgaria and Romania became members of the European Union.
3. Within CESR, the Review Panel is chaired by Carlos Tavares, Chairman of the Portuguese Authority (CMVM) and currently CESR's Vice Chairman as of January 2007. Prior to January 2006, The Review Panel was chaired by Kaarlo Jannari, former Chairman of the Finish Authority (Rahoitustarkastus) and former Vice Chairman of CESR.
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). 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. Baron Alexandre Lamfalussy chaired this group. The report itself was endorsed by the European Council and the European Parliament. The relevant documents are available on the CESR website.
5. Each Member State of the European Union has one member in 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:

CESR

Fabrice Demarigny
Secretary General of CESR

or

Victoria Powell
Information Officer

Tel: +33 (0)1.58 36 43 21
Fax: +33 (0)1.58 36 43 30
Email: secretariat@cesr.eu
Web site: www.cesr.eu