



Date: September 2007
Ref: 07-664

METHODOLOGY FOR MAPPING EXERCISES

1. Introduction

1. The Review Panel has identified the issue of enhancement of the quality of the responses provided by CESR members based on the survey for a mapping exercise, as a key element in the conduct of future mapping exercise in order to be able to appropriately describe supervisory powers/practices as well as respective divergences. This is also the case for peer reviews.
2. A mapping exercise of powers can have a broader character than a self-assessment or a peer review. A self-assessment or a peer review may not be considered as the appropriate tools, especially in the case of Level 1 and Level 2 provisions, where it is the Commission's competence at Level 4 to make assessments on the transposition of EU legislation by member states, or for example where the instrument of peer pressure is not desirable. In addition, a mapping exercise may assist in cases where Level 3 measures are not (yet) in place and through the mapping exercise supervisory convergence can be promoted.
3. According to Art. 2.2. of the Protocol on Review Panel of the Committee of European Securities' Regulators (the "Protocol") in order to achieve its objectives as set out in Article 2.1, the Review Panel shall use a number of different tools including mappings.
4. According to Article 5 of the Protocol, the Review Panel may establish a separate methodology as a guideline for mapping exercises.

2. Scope of the methodology

5. This Methodology sets out the working procedures that have to be followed in case a mapping exercise is conducted by the Review Panel as well as the commitments of CESR authorities to actively ensure that a mapping exercise can be conducted efficiently and in a timely manner.
6. The Methodology is divided as follows:
 - Purpose of the mapping exercise
 - Commitments of CESR authorities
 - Mandate
 - Organisation of the work
 - Questionnaire
 - Responses to the questionnaire



- Interaction/ cooperation with other CESR groups
- Content and approval of the report and other accompanying documents
- Publication and updating of the outcome

3. Purpose of the mapping exercise

7. The purpose of a mapping exercise is generally (but not exclusively) to get an overview of the supervisory powers and the day to day application of supervisory provisions set out in Community legislation and by CESR measures (CESR standards, recommendations and guidelines) as well as the description of other areas of interest/ importance to CESR members.
8. A mapping exercise highlights differences, issues of interest and challenges encountered in the application of the respective community legislation provisions and CESR measures as reported by CESR members so that good practices may be developed by the relevant CESR groups.
9. The mapping exercise does not aim to extend or change the scope or nature of supervisory provisions but promotes supervisory convergence in describing how Community Legislation and/or a CESR measure is applied in practice in different CESR Members leading to their consistent implementation in each CESR authority's jurisdiction.
10. Although a mapping exercise has a peer pressure element, it is not a peer review. Benchmarks as provided for peer reviews or self assessments are not applied in the mapping exercise. The mapping exercise is limited to describe the actual situation and the day-to-day application of supervisory practices, without assessing the different regulatory or supervisory regimes.

4. Commitments of CESR Authorities

11. In accordance with Article 4 of the Protocol, CESR authorities are committed to participate in the mapping exercise, devote appropriate human resources and provide their contributions within the agreed-on deadlines.
12. Only if all CESR members cooperate and commit themselves to a mapping exercise and provide complete, coherent and high-quality responses, a mapping exercise will result in a meaningful outcome. It should be also stressed that lack of responses or lack of description of supervisory powers and practices is qualified as non-contributing in the final reports for a respective question.
13. CESR authorities are requested to use specific IT tools if such tools exist for the conduct of the mapping exercises.
14. It is important to have the same sub-group composition during the whole process of a mapping exercise so that there is a consistent approach and a good tracking of the changes made in the meantime.

5. Mandate

15. The Review Panel can conduct mapping exercises that are included in the approved Review Panel work program or for which it has received a specific mandate from CESR. When the mapping exercise is part of its work program, the Review Panel will establish the terms of reference for this particular exercise including the publication policy to be followed. When a specific mandate is granted to the Review Panel for a mapping exercise, the terms of reference including the publication policy for this exercise will be specified in the mandate.



6. Organisation of the work

16. In accordance with Art. 3.3 of the Protocol, the execution of a mapping exercise can be delegated to a sub-group of the Review Panel. Apart from members of the Review Panel, other experts from CESR members can be also nominated to participate in the sub-group. The Review Panel may decide to consult external experts. These experts should be obliged by professional secrecy and as such will need to be bound by a suitable confidentiality agreement.
17. A contact person from each CESR authority undertakes responsibility for the mapping exercise. The contact person should be a senior official (indicatively either the Internal Coordinator or a Review Panel member or another senior expert nominated by the Internal Coordinator).
18. In accordance with Article 3.4 of the Protocol, the subgroup is chaired by a member of the Review Panel (the “Coordinator”). The Coordinator of the subgroup reports regularly to the Review Panel, and at the discretion of the Review Panel, informs relevant CESR expert groups on the ongoing work and/or consults, if necessary.
19. In accordance with Article 3.5 of the Protocol, sub-groups will keep the Chair and the Review Panel regularly updated on the progress of the mapping exercise, and highlight any issues or problems that may arise during the course of the work.
20. The work of the sub-group will be supported by CESR Secretariat in accordance with Article 13 of the Protocol.
21. In order to enhance the good preparation of Review Panel members for a mapping exercise, it is necessary that the internal coordinator, the members of the Review Panel and/ or any other experts nominated by the Internal Coordinators, if deemed necessary, to take part in a “kick-off” training seminar, organised by CESR. This training seminar will take place at the stage of distribution of mapping surveys to CESR members and before the approval of the questionnaire by the Review Panel. The main purpose of the training seminar is to explain the scope of the relevant mapping exercise that is currently undertaken and the answers that are expected.
22. Another element for assisting the Review Panel in conducting mapping exercises could be the development and application of suitable IT-tools. Online questionnaires could enhance transparency, impede inconsistent subsequent descriptions and facilitate the submission of responses by members.

7. Questionnaire

23. For the purpose of conducting a mapping exercise, the Review Panel will develop a questionnaire
24. To promote a focused mapping exercise and questionnaire, input from CESR members may be sought in advance regarding the topic.
25. The structure and content of the questionnaire will depend on the nature of the mapping exercise being conducted.
26. It is anticipated that when conducting a mapping exercise relating to powers, the questionnaire will be divided into two broad categories: a) questions to ascertain whether CESR authorities have the powers and to what extent (“Does your authority have the power?”) and b) how these powers are exercised in practice/ the day to day application (“How is this power exercised?”).



27. When undertaking a mapping exercise on supervisory powers, the following categories of powers may be under consideration during a mapping exercise, if applicable: rulemaking, investigatory, sanctioning and enforcement powers, cross-border exchange of information and cooperation powers.
28. While drafting a questionnaire for a mapping exercise it is considered useful and necessary to adhere to the provisions of the relevant Community legislation or CESR measure, if applicable to the scope of the exercise being conducted.
29. When developing the questionnaire the parameters of confidentiality for the particular exercise should be established and communicated to the Member States together with the questionnaire in accordance with Articles 11.1 and 11.3 of the Protocol.
30. The parameters for the statistics if any are required should be consistent, transparent and clear. It should be explicitly defined from the beginning of the mapping exercise whether statistics provided by CESR Members are mandatory or not.
31. The Review Panel, upon recommendation of the relevant sub-group, will propose for approval to CESR members (the appropriate deadlines for the responses to the questionnaire. Moreover, the Review Panel will define correction policies within the agreed-on deadlines for subsequent comments. CESR authorities will have the opportunity to comment one time on the draft report (first round of comments), one time on the final report (second round of comments) and a third time on the final report before publication, if decided by CESR. In exceptional cases, the Review Panel may decide for an additional round of comments.
32. The questionnaire as basis for the mapping exercise shall be approved by the Review Panel. After the approval of the Review Panel, the questionnaire is distributed to the CESR authorities to provide their responses.

8. Interaction/ Cooperation with other CESR groups

33. The Review Panel interacts and cooperates with other CESR groups in accordance with Article 8 of the Protocol.
34. Issues of interest and especially, possible "good practices" encountered are reported to the relevant CESR groups for their possible consideration given that such issues can assist as an indicator of where further work to promote an integrated capital market might be possible or beneficial. "Good practices" may develop into best practices following a consultation process with expert groups and market participants and may be adopted by CESR as benchmarks for subsequent peer-reviews.
35. The Review Panel may ask the other CESR group to inform it about the discussions on the issues referred to it for consideration by the Review Panel within a prescribed deadline.

9. The content and approval of the report and other accompanying documents

36. In accordance with Article 2.6 and 2.8 of the Protocol, the reports of a mapping exercise on powers should contain indicatively the following areas:
 - a. ***A description of supervisory powers*** and how they are exercised in practice and the designation of the respective legal basis: CESR members describe whether they are exercising these powers directly, in collaboration with other agencies, institutions, etc., with application to judicial authorities, delegated powers or if they do not have the powers according to the respective provisions of the existing legislation. In the latter case, CESR authorities should identify the authority/entity that exercises the particular power.



- b. ***Divergences or different approaches:*** Members also describe how they have implemented the specific legal provisions in their everyday execution of their tasks. Different approaches as well as interesting practices are described. There is not a single way to achieve appropriate implementation of the specific legal provisions and differentiated practices are often recognized mainly taking into consideration the size and specifications of the national markets. The alternative approaches described in a final report do not imply any evaluation on whether a regulatory practice is conducted pursuant to community legislation and CESR measures or not and do not have a negative character per se.
- c. ***A description of issues of interest:*** The report also includes a series of issues, which have been deemed of special interest by the Members concerning the application of the legal provisions in practice. Furthermore, the Review Panel identifies issues of interest that arise from a comparison of Members' regulatory practices against the background of the provisions of community legislation and CESR measures.
- d. ***Good practices:*** As a result of a mapping exercise the Review Panel may identify and describe in the reports possible “good practices” whenever such identification has been possible. Possible “Good practices” in this context describe regulatory practices that have been well elaborated by one or more respondents of the survey and which are considered to be more effective than the norms, better targeted, practices which are broadly applied by Members or practices which the Review Panel considers as worthwhile mentioning. “Good practices” do not have any normative or binding character. They may be well-elaborated and may provide a good illustration as to how a specific provision has been exercised in one or more jurisdictions.

In no way do they intend to disqualify other practices, or forms of implementation that may be more suitable for a specific jurisdiction. For the purposes of a Review Panel mapping exercise, “good practices” at this stage are not to be conceived as CESR standards or recommendations. However, “good practices” can serve as valuable ways of exercising powers or inspiration for Members who aspire to learn from other Members’ experiences. They may develop into “best practices” according to the procedure described in point 37.

- e. ***Statistics:*** Members may also be asked to provide statistics on the application of certain regulatory practices according to the questionnaire.

37. It is also imperative for a successful mapping exercise to ensure consistency between different reports, tables and summaries.

38. The Review Panel shall submit its reports and other accompanying documents for approval to CESR in accordance with Article 10 of the Protocol.

10. Publication and updating of the outcome

39. Once completed, the final outcome of the mapping exercise, excluding the confidential issues previously agreed, will be made public on the website of CESR accompanied with a press release. The publication will be made in accordance with Article 11 of the Protocol and will include the final report and any other accompanying documents such as summaries or tables that reflect the findings of the mapping exercise and upon decision of CESR the individual responses of the CESR authorities.

40. All publications of the Review Panel as approved by CESR are under the final responsibility of CESR.

41. In addition to the publication of the outcome of the exercise, the Chair of the Review Panel may send to the Chairs individual letters pointing out the non compliance, divergence of



practices or any other problem or deficiency of their particular jurisdictions as reflected in the findings of the Review Panel exercise.

42. The reports and other accompanying documents can be updated on a regular basis if this is mentioned in the mandate or is agreed by CESR in accordance with Article 12 of the Protocol.

ANNEX

I. Responses to the questionnaire

- All questions of the questionnaire have to be responded by CESR authorities.
- Regarding the questions to ascertain whether CESR authorities have the power, an authority is considered to have the power if it is stated in national implementing measures such as 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 actions by the self regulatory organisation concerned or by the regulator), and the relevant case law. Internal procedures followed by regulators that do not trigger enforcement action are also classified as implementing measures for these purposes.
- CESR authorities are considered to have the relevant powers in case of national implementing measures that are not in force but have already been formally adopted and a concrete date of their coming into force is stated. If a national implementing measure 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).
- CESR Secretariat or the members of the subgroup will question individual CESR authorities in accordance with the Annex, as to the completeness of their responses in order to achieve an acceptable level of consistency and if deemed necessary will stipulate that some answers need to be completed within a set timeframe.
- In addition, the Secretariat will prepare a paper setting out the information that was included in the draft report and classified as confidential by the relevant 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 15 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.
- A CESR authority will be classified as “Not contributing” for the whole mapping exercise or for individual questions if it had not provided its contribution or if it left unanswered some individual questions of the questionnaire respectively within the prescribed deadline. In that case, the exercise will continue without the input of this CESR authority and the “non contributing” situations will be reported to the CESR plenary for explanation.

II. Indicative list of questions for the assessment of the responses to the questionnaire



The following questions are indicatively necessary to be answered during the conducting of a mapping exercise on powers:

- Is there a response in each of the columns?
- Does the CESR authority have the power and to what extent?
- If the CESR authority does not have the power or shares the power with other authorities, what is the competent authority or the other authorities that share the competence with the CESR authority?
- When more than one domestic authority is responsible, which authority has which specific power?
- Is the power prescribed in national implementing measures as described in the Methodology (i.e. laws, regulations, guidelines, circulars or rules)?
- Are there any planned changes to relevant provisions? If yes, what changes in the legislative process have the changes reached and when are the changes to be effective?
- Has the day-to-day application been clearly, fully and accurately described?
- Are there any examples or other evidence (e.g. case law) illustrating how the powers are exercised in practice and whether authorities have encountered problems or impediments in the day-to-day application?