



Date: 22 August 2008
Ref.: CESR/08-643

CALL FOR EVIDENCE

Formal request for technical advice on identification of regulatory arrangements for post-trading infrastructures and to advise on possible solutions in terms of bridging any potential differences in these arrangements

Background:

At the end of July 2008, CESR received from the European Commission a mandate to identify regulatory arrangements for post-trading infrastructures and to advise on possible solutions in terms of bridging any potential differences in post-trading arrangements in the Member States.

The mandate with the request for advice is attached and the deadline set for CESR's technical advice is the end of December 2008.

The technical advice will be prepared by CESR's Post-Trading Expert Group, chaired by István Farkas, Chairman of the Hungarian Financial Supervisory Authority (HFSA). Wim Moeliker, rapporteur of the Post-Trading Expert Group, will provide assistance on behalf of the CESR Secretariat.

Call for evidence:

In releasing this request for technical advice, the European Commission followed up on the initiative conducted by CESR's Post-Trading Expert Group in late 2007/early 2008 to map the regulatory arrangements currently in place in all jurisdictions. Given the growing number of requests for access and interoperability among providers of infrastructure in the EU, this review aims to:

- conclude the mapping exercise on the regulatory and supervisory arrangements (set at national, regional and/or local level) in all CESR Members' countries;
- ensure consistent and detailed level of information for each CESR Member; and
- publish the final results of the mapping exercise.

The issues in relation to which CESR action or technical advice is sought are listed in paragraph 2 of the attached mandate.

CESR is inviting all interested parties to submit their experiences and their views as to what CESR should consider in its advice to the European Commission. **All contributions should be posted by 19 September 2008, on CESR's website in the section "Consultations".**

Timetable:

In order to meet the deadline set by the European Commission, and given the nature of the advice sought, after receiving responses on this call for evidence no further steps in the area of public consultation are envisaged.

Mandate to CESR for technical advice

Identifying regulatory arrangements for post-trading infrastructures and advising on possible solutions in terms of bridging any potential differences in these arrangements

This mandate requests CESR (i) to map out Member States' regulatory and supervisory arrangements (set at national, regional and/or local level) relating to the setting up of links between post-trading infrastructures and (ii) to advise the Commission – in relation to existing link requests made under the aegis of the Code of Conduct - on how best to address any potential differences in such arrangements that the mapping exercise may uncover.

This mandate is given in order to ensure that the Commission has adequate technical background on existing Member States' regulatory arrangements in the post-trading area in order to make better informed policy choices.

The present mandate takes into full consideration the agreement on implementing the Lamfalussy recommendations reached with the European Parliament on 5 February 2002. In this agreement, the Commission committed itself to a number of important points, including full transparency. For this reason, this request for technical advice will be published on DG Internal Market's web site and the European Parliament duly informed.

1. BACKGROUND

Following the adoption of the Access and Interoperability Guideline in June 2007, market infrastructures have made a large number of link requests. The drivers behind most of the requests are Central Counterparties (CCPs). Nevertheless, some requests come from Central Securities Depositories (CSDs) as well.

Post-trading arrangements are systemically important. Accordingly, all Member States regulate and supervise post-trading arrangements to mitigate risks and to ensure their safety and soundness. Thus, national regulators have a legitimate interest in assessing the soundness of incoming post-trade service providers, as they need to be satisfied as to the resilience, safety and soundness of the arrangements so that a link does not adversely affect the level of risk of local financial market infrastructure arrangements. This interest is clearly recognised in Article 34(2) of the Markets in Financial Instruments Directive (MiFID).

In the absence of common definitions and of authorisation and operational requirements at European level for post-trading infrastructures such as CCPs and CSDs, the regulatory positions and approaches of Member States and of the national supervisors and overseers differ. These differences have a direct impact on the treatment of cross-border link requests between infrastructures

On this environment it is paramount for post-trading infrastructures to have a full and clear understanding of the regulatory arrangements (set at national, regional and/or local level) they would need to comply with in order to be able to set up links

and to provide their services. This is why the Commission approached national regulators in 2007 and asked them to map Member States' regulatory arrangements and subsequently publish the results of this exercise. National regulators undertook this task within the context of CESR's Post-trading Expert Group (PTEG).

2. ISSUES IN RELATION TO WHICH CESR ACTION OR TECHNICAL ADVICE IS SOUGHT

Whilst the PTEG's mapping exercise produced useful results, it is limited in scope (i.e. it does not cover all Member States) and provides varying amounts of detail for Member States that it covers. In order to overcome these shortcomings, the Commission therefore asks CESR to:

- conclude the mapping exercise on the regulatory and supervisory arrangements (set at national, regional and/or local level) in all CESR members' countries;
- ensure consistent and detailed level of information for each CESR member;
- publish the final results of the mapping exercise.

Should an infrastructure supervised by a CESR member be the subject of a link request during the period of the mapping exercise and should the latter exercise uncover differences in regulatory arrangements between the jurisdiction of the requesting and the jurisdiction of the receiving infrastructure, the Commission asks CESR to:

- clearly outline differences in regulatory arrangements that the mapping exercise has uncovered;
- categorise these differences according to their nature, their rationale and level of importance;
- for each such category, advise the Commission on what would be the best way in which to bridge the differences in order to avoid any undue duplication of requirements that an incoming infrastructure may be subject to when accessing a market in another Member State.

3. THE PRINCIPLES TO WHICH CESR SHOULD HAVE REGARD

As regards its working approach, CESR is invited to take account of following principles:

- the principles set out in the Lamfalussy Report and mentioned in the Stockholm Resolution of 23 March 2001;
- CESR should provide comprehensive advice, based on the majority view of its members with possible minority opinions, on the matters described above;
- CESR should address to the Commission any questions which arise in the course of its work.

4. DUE DATE

CESR's advice is sought by the end of December 2008.