



Ref: CESR/09-088

**Consultation Paper on  
Proposals for the Review Panel Work Plan**

**March 2009**

## Introduction

1. The Committee of European Securities Regulators (“CESR”) is continuing its efforts to prepare ground for convergent application of various EU legislation concerning securities markets.
2. CESR’s peer pressure group, the “Review Panel”, was established in March 2003 as a key group for facilitating supervisory convergence. This is in line with the Commission decision (Ref: 2009/77/EC) updated 23<sup>rd</sup> of January 2009, which in its Article 6, requires CESR to have in place instruments to promote common supervisory practices. The necessity of having a peer pressure tool is reflected by Ecofin in its Conclusions of December 2007 following its review of the Lamfalussy process.
3. At its meeting on 27 January 2009, the Review Panel decided to publish this consultation paper in order to get feedback from market participants on practical issues related to divergences in securities regulation in different Member States. The contributions received from market participants will be assessed by the CESR Review Panel and, where appropriate, reflected in the work programme for 2009.

## Consultation

**Interested parties are welcome to submit their comments to the topics and questions set out in this paper**

4. Market participants are asked to reply to a questionnaire which breaks down into two parts:
  - a generic part where we invite interested parties to provide views on the current work programme, which is set out in a table in the appendix, as well as further topics and issues which should be considered and
  - specific questions on the Transparency Directive and the Takeover Directive.
5. The table in the appendix reflects the topics which have been identified by the CESR Review Panel for potential inclusion in the work program in 2009.
6. In due course the CESR Review Panel will provide the result of the consultation
7. Please send the responses via CESR’s website ([www.cesr.eu](http://www.cesr.eu)) under section “Consultations”. The consultation closes on 7 April 2009.

## Background of CESR’s Review Panel

8. CESR’s Protocol on Review Panel<sup>1</sup> (Ref: CESR/07-070b) sets out the role of the Review panel, the purpose of its work, its tools and working procedures, as well as the commitments of CESR authorities to actively ensure that the Review Panel fulfills its role.
9. The Review Panel conducts reviews of the way in which specific aspects of the regulation of financial markets are conducted and supervised in the European Economic Area and also examines whether the enforcement of the relevant framework is effective. The Review Panel is focusing on the review of the practical day to day application of EU legislation and CESR standards and guidelines (“level 3 measures”) and EC recommendations within the membership. It gives its opinion on the overall process of implementation and signals the extent to which specific EU provisions are applied in practice by CESR Members. Further, the

---

<sup>1</sup> [www.cesr.eu/popup2.php?id=4676](http://www.cesr.eu/popup2.php?id=4676)

Review Panel provides for common understanding and expresses views on specific problems in the implementation process encountered by individual Members.

10. The following types of exercises can be conducted by the Review Panel: self-assessments and Peer Reviews<sup>2</sup>, mappings<sup>3</sup>, surveys, and, upon a specific mandate from CESR, selective reviews involving one or more CESR authorities. In short, a peer review can be conducted following a self assessment by CESR Members themselves of the level of implementation of supervisory provisions in their jurisdictions. A mapping, which can have a broader character than a self-assessment or a peer review, is a high-level fact finding exercise throughout the Membership. A selective review is focused on a specific topic and / or (a) specific CESR Member(s). Also, CESR may ask the Review Panel to develop and use other specific tools when needed.
11. Based on the Review Panel Protocol, the following key work streams have been conducted in the past by CESR Review Panel:

#### **Mapping-exercises:**

- Mapping of supervisory powers, practices and sanctioning regimes with regard to MiFID<sup>4</sup> (Ref: 08-220), 16<sup>th</sup> of February 2008
- Mapping of equivalence of supervisory powers in EU under MAD and PD<sup>5</sup> (Ref: CESR/07-334b), 21<sup>st</sup> of June 2007
- Mapping on CESR Members powers under MAD and its implementing measures<sup>6</sup> (CESR/07-380), 21<sup>st</sup> of June 2007
- Mapping on CESR Members powers under PD and its implementing measures<sup>7</sup> (CESR/07-383), 21<sup>st</sup> of June 2007

#### **Self-assessment and peer review-exercises:**

- Self-assessment of CESR's Members implementation of CESR guidelines on transitional provisions of amending UCITS directives<sup>8</sup> (Ref: CESR/06-182), 23<sup>rd</sup> of May 2006
- Self-assessment to simplify the notification procedure for UCITS<sup>9</sup> (Ref: 07-439), 1<sup>st</sup> of April 2008
- Peer review on implementation of CESR Standard No 1 on financial information<sup>10</sup> (Ref: CESR/06-181), 3<sup>rd</sup> of August 2006
- Peer review on common implementation of CESR's cold calling Standards<sup>11</sup> (Ref: CESR/05-418b), 3<sup>rd</sup> of January 2006

<sup>2</sup> [www.cesr.eu/popup2.php?id=4677](http://www.cesr.eu/popup2.php?id=4677)

<sup>3</sup> [www.cesr.eu/popup2.php?id=5045](http://www.cesr.eu/popup2.php?id=5045)

<sup>4</sup> [www.cesr.eu/popup2.php?id=5569](http://www.cesr.eu/popup2.php?id=5569)

<sup>5</sup> [www.cesr.eu/popup2.php?id=4670](http://www.cesr.eu/popup2.php?id=4670)

<sup>6</sup> [www.cesr.eu/popup2.php?id=4671](http://www.cesr.eu/popup2.php?id=4671)

<sup>7</sup> [www.cesr.eu/popup2.php?id=4672](http://www.cesr.eu/popup2.php?id=4672)

<sup>8</sup> [www.cesr.eu/popup2.php?id=3821](http://www.cesr.eu/popup2.php?id=3821)

<sup>9</sup> [www.cesr.eu/popup2.php?id=5025](http://www.cesr.eu/popup2.php?id=5025)

<sup>10</sup> [www.cesr.eu/popup2.php?id=3900](http://www.cesr.eu/popup2.php?id=3900)

<sup>11</sup> [www.cesr.eu/popup2.php?id=3687](http://www.cesr.eu/popup2.php?id=3687)

## Questions

### General

1. Please comment on the proposed subjects (work streams) as set out in the table below, in particular the directive(s) that need to be addressed, the particular issues involved, and the reasons for these work streams.
2. Is there any other subject in securities regulation missing from the topics listed in the table below (if yes, please explain why)? To which subject(s) and particular issues of concerned directive(s) on securities regulation should CESR give priority (explain why)?
3. Are there currently any subjects listed that you feel should not be taken into account? If so, please state which topic(s) and why.
4. Do you have any other comments / suggestions / issues with regard to practical divergences in securities regulations you encounter in your day-to-day practice?

### Specific

5. In your daily practice do you encounter any cross-border issues related to the Transparency Directive that in your view might be worthwhile investigating? If so, please specify and give reasons.
6. If you, in your daily practice, have (had) experience with regard to cross-border takeovers within the EU, would you consider a factual overview of the regulatory framework and divergences throughout the EU a priority? Please explain why (not).
7. If you consider takeovers a priority, please specify issues of divergences in national securities regulations<sup>12</sup> throughout the EU, you encounter in your day to day practice?

---

<sup>12</sup> Securities regulation as opposed to civil law issues (such as civil law protective measures).

Table with possible Review Panel work streams for 2009

	Subject	Directive concerned	Methodology to be used	The issues which needs to be reviewed	Why
1	Contingency measures / emergency powers	-	Self-assessment	RP should investigate more broadly what type of contingency measures / emergency powers regulators have at their disposal	Regulators should be aware of the range of instruments that is at their disposal (see e.g. contingency measures / emergency powers with respect to short selling: shut down markets, impose short selling restrictions, etc).
2	Use of national options and discretions	a. MiFID b. Prospectus Directive c. UCITS Directive	Selective review	Passport notification	Passport notification diverges throughout the Membership: host authority has the possibility to impose additional requirements that are not imposed by the home authority.
3	Divergence in prospectus regimes	Prospectus Directive	Peer review	Approval of prospectus and use of exemptions Threshold of € 1,000-€50,000 for (non) professional investors	The prospectus regime (and particularly the approval of the prospectus) diverges throughout the Membership.
4	Availability of prospectuses	Prospectus Directive	Selective review	The RP should investigate the availability of prospectuses both in terms of support (paper, electronic, etc) and through a comparison between home and host countries.	The availability of information to investors should be homogenous across Member States.
5	Key investor information for securities	Prospectus Directive	Selective review	The RP should examine whether the extent of information which is available for securities in general terms, and in comparison to structured products is satisfactory.	The information available should be homogenous across products.
6	Differences in use of guidance	Market Abuse Directive (MAD)	Peer review	Possible divergence in use across Member States.	To identify the extent to which the 1 <sup>st</sup> and 2 <sup>nd</sup> set of CESR guidance and information on the common operation of the Directive to the market (1 <sup>st</sup> set: CESR/04-505b, 2 <sup>nd</sup> set: CESR/06-562b) have been applied in practice by CESR Members.

	Subject	Directive concerned	Methodology to be used	The issues which needs to be reviewed	Why
7	Actual use of sanctioning powers	a. Market Abuse Directive <sup>13</sup>	Peer review	Inside information and market manipulation	When the directive is fully implemented, it can only be effective across Member States when sanctioning powers and their use are appropriate and similar.
		b. MiFID	Selective review	Possible divergence in use across Member States.	When the directive is fully implemented, it can only be effective across Member States when sanctioning powers and their use are appropriate and similar.
8	Divergence in liability regimes	UCITS Directive	Selective review	Liability of the promoter, depositary, central administration agent, auditor etc	Issues that are encountered with regard to cross border mutual funds (UCITS) as the Madoff case seems to indicate that EU Members interpreted rules governing UCITS differently (e.g protection of investors varies from one Member to another and as a consequence liability issues of the promoter, depositary, central administration agent, auditor etc).
9	Takeover bids regime	Takeover bids Directive	Mapping (fact finding)	Extent of divergence in actual take-over regimes across Member States, in particular with respect to the concept of “acting in concert”.	The Takeover Directive being a minimum harmonisation directive, divergences within the Membership is not surprising. However, this does not mean a factual overview of the regulatory framework and divergences throughout the EU cannot be given in some detail – in particular with respect to the concept of “acting in concert”.
10	CESR Recommendations on Article 51(3) Implementing Directive MiFID	Implementing directive MiFID	Peer Review	RP should assess if competent authorities in practice maintain lists of minimum records investment firms are required to keep under MiFID.	As a follow up to CESR recommendations (CESR/06-552) on article 51 (3) Implementing Directive MiFID (2006/73/EC) with regard to retention of documents – in order to assess if competent authorities in practice maintain lists of minimum records investment firms are required to keep under MiFID. (This work stream has low priority).

<sup>13</sup> Level 3 – 1<sup>st</sup> and 2<sup>nd</sup> set of CESR guidance and information on the common operation of the Directive to the Market.