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Summary of CESR's self
assessment of the implementation
of Standard No 2 on financial
information – Coordination of
enforcement activities



IMPORTANT NOTICE

In the interest of transparency and in order to inform interested parties, CESR is publishing this document on the Review Panel's assessment of CESR Members' implementation of CESR Standard No. 2 on Financial Information – Coordination of enforcement activities, together with a summary table of the review for ease of reference.

The information provided by the Members of CESR for the purposes of this review was produced within the constraints of and solely for the purposes of the CESR Review Panel process of monitoring the status of implementation of the above standard.

This document and its annexes have no legal effect, they do not present or represent any interpretation of or definitive position regarding existing laws, regulations or other forms of legislation in any jurisdiction. This document and its annexes cannot and should not be relied upon for any other purpose other than the one they were prepared for. In particular, they should not be relied upon as a substitute for or as guidance on any aspect of the regulatory systems of any Member State, or as a source of information for the purposes of supervision or enforcement of the CESR Standard No. 2 on Financial Information – Coordination of enforcement activities.

The published self assessments regarding a particular Member State has been prepared by the relevant CESR Member. The documents and the self assessments provide a “snap shot” and therefore should and cannot be considered as a full representation of the regulatory provisions relating to the implementation of the CESR Standard No 2 in any Member State.



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Table 1 – Country codes and acronyms of competent authorities

Member States and acronyms		CESR Member / Competent Authority and acronyms	
Austria	AT	Financial Market Authority	FMA
Belgium	BE	Commission Bancaire, Financiere et des Assurances	CBFA
Bulgaria	BG	Financial Supervision Commission	FSC
Cyprus	CY	Cyprus Securities and Exchanges Commission	CySEC
Czech Republic	CZ	Czech National Bank	CNB
Denmark	DK	Finanstilsynet Danish Securities Council Danish Commerce Companies Agency	Finanstilsynet DSC DCCA
Estonia	EE	Estonian Financial Supervision Authority	EFSA
Finland	FI	Finanssivalvonta	FIN-FSA
France	FR	Autorité des Marchés Financiers	AMF
Germany	DE	Bundesanstalt für Finanzdienstleistungsaufsicht Financial Reporting Enforcement Panel	BaFin FREP
Greece	EL	Capital Market Commission	HCMC
Hungary	HU	Hungarian Financial Supervisory Authority	HFSA
Ireland	IE	Irish Financial Services Regulatory Authority Irish Auditing and Accounting Supervisory Authority	IFSRA IAASA
Iceland	IS	Financial Supervisory Authority	FME
Italy	IT	Commissione Nazionale per le Società et la Borsa	Consob
Latvia	LV	Financial and Capital Markets Commission	FCMC
Lithuania	LT	Lithuanian Securities Commission	LSC
Luxembourg	LU	Commission de Surveillance du Secteur Financier	CSSF
Malta	MT	Malta Financial Services Authority	MFSA
Netherlands	NL	Autoriteit Financiële Markten	AFM
Norway	NO	Kredittilsynet	Kredittilsynet
Poland	PL	Polish Financial Supervision Authority	PFSA
Portugal	PT	Comissão do Mercado de Valores Mobiliários Banco de Portugal Instituto de Seguros de Portugal	CMVM BP ISP
Romania	RO	Romanian National Securities Commission	CNVMR
Slovakia	SK	National Bank of Slovakia	NBS
Slovenia	SI	Securities Market Agency	SMA
Spain	ES	Comision Nacional del Mercado de Valores	CNMV
Sweden	SE	Finansinspektionen The Nordic Growth Market OMX Nordic Exchange Stockholm	Finansinspektionen NGM AB OMX
United Kingdom	UK	Financial Services Authority Financial Reporting Review Panel	FSA FRRP



Executive summary

1. The current document reports on the self-assessment by CESR Members on the implementation of Standard No 2 on financial information – Coordination of enforcement activities with respect to the application of the following key principles. The cut-off date for the self-assessment was 5 August 2008.
2. **Principle 1** – deals with ex ante and ex post enforcement decisions taken by competent independent administrative authorities or by bodies delegated by these authorities (“EU National Enforcers”) that should take into account existing precedents consistent with the timing and feasibility constraints which characterize the decision. Where practicable, discussions with other EU National Enforcers should take place before significant decisions are taken.
3. **Principle 2** – ensures that within a reasonable time after decisions are taken by an EU National Enforcer, details of these decisions should be made available to the other EU National Enforcers in accordance with the policies developed by CESR.
4. **Principle 3** – states that the EU National Enforcers should follow a confidentiality regime consistent with that applicable to CESR Members
5. **Principle 4** – emphasises in order to achieve a high level of harmonisation, European Enforcers Coordination Sessions (EECS) of the SCE will be organised and will involve all EU National Enforcers of standards on financial information, being CESR Members or not. Such sessions will be aimed at discussing decisions taken at national level, as well as experiences in the application of standards on enforcement.
6. Details of the application of the principles are given in the following section (paragraphs 18-52) of the report.
7. The following two Members of CESR did not participate in this exercise: Austria and Iceland. Therefore these jurisdictions are classified as “non contributing” in accordance with the Methodology for self-assessment and peer review (Ref: CESR / 07-071b). Czech Republic did not respond to the questionnaire, because it has not implemented the Transparency Directive (TD).
8. The results of the self assessments on the basis of the overall benchmarking criteria discussed above are summarised in the following three tables. One key result is that, as of 5 August 2008, significantly less than half of CESR Members self-assessed full application of Standard No. 2 on financial information – Coordination of enforcement activities.

Table 2 – Summary of the overall benchmarking based on the self-assessments (referring to 5 August 2008)

Number of Members	Countries	Overall rating achieved		Percentage of total of 29 Members
13	Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, Norway, Poland, Portugal, Spain and UK	100%	Apply all the principles	45%
5	Cyprus, Estonia, Greece, Hungary, Romania, and Sweden	85%	At least partial apply the principles overall	21%
6	Latvia, Lithuania, Malta, Netherlands*, and Slovakia	75%	Do not apply the principles overall	28%
1	Bulgaria	50%		
2	Czech Republic, Slovenia	Not implementing		
2	Austria and Iceland	Not contributing	-	7%

* The AFM considers itself to be in full compliance with CESR Standard No.2 since the Transparency Directive came into force in the Netherlands on 1 January 2009.



9. Application by the Members of a given principle varies like follows:

Table 3 – Summary of the overall self assessed application by CESR Members of the Standard No 2 on financial information, and percentage of Members that self-assess “fully applying” a given principle (referring to 5 August 2008)

Allocation of points*	Principle 1	Principle 2	Principle 3	Principle 4	Total
Belgium	25	25	25	25	100
Denmark	25	25	25	25	100
Finland	25	25	25	25	100
France	25	25	25	25	100
Germany	25	25	25	25	100
Ireland	25	25	25	25	100
Italy	25	25	25	25	100
Luxembourg	25	25	25	25	100
Norway	25	25	25	25	100
Poland	25	25	25	25	100
Portugal	25	25	25	25	100
Spain	25	25	25	25	100
UK	25	25	25	25	100
Cyprus	25	25	25	10	85
Estonia	25	25	25	10	85
Greece	25	25	25	10	85
Hungary	25	25	25	10	85
Romania	25	25	25	10	85
Sweden	25	25	25	10	85
Latvia	25	25	25	0	75
Lithuania	25	25	25	0	75
Malta	25	25	25	0	75
Netherlands	25	25	0	25	75
Slovakia	25	25	25	0	75
Bulgaria	0	25	25	0	50
Czech Republic	0	0	0	0	0
Slovenia	0	0	0	0	0
Austria**	-	-	-	-	-
Iceland**	-	-	-	-	-
Percentage of all 29 Members that self-assess "full applying" a given principle	83%	86%	83%	48%	

* Allocation of points to countries for applying principles - fully applied: 25 points, partially applied: 10 points, not applied: 0 points.

** Not contributing



Table 4 – SUMMARY SELF-ASSESSMENT (referring to 5 August 2008)

KEY = not contributing

Not applied
✘

Partially applied
○

Fully applied
✔

		AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IS	IT	LT	LU	LV	MT	NL	NO	PL	PT	RO	SE	SI	SK	UK	
PRINCIPLES	1		✔	✘	✔	✘	✔	✔	✔	✔	✔	✔	✔	✔	✔		✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔
	2		✔	✔	✔	✘	✔	✔	✔	✔	✔	✔	✔	✔	✔		✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✘	✔	✔
	3		✔	✔	✔	✘	✔	✔	✔	✔	✔	✔	✔	✔	✔		✔	✔	✔	✔	✔	✘	✔	✔	✔	✔	✔	✔	✘	✔	✔
	4		✔	✘	○	✘	✔	✔	○	○	✔	✔	✔	✔	○	✔		✔	✘	✔	✘	✘	✔	✔	✔	✔	○	○	✘	✘	✔



Introduction

10. The CESR Standard No 2 on financial information – Coordination of enforcement activities (“Standard No 2”), was published in April 2004 (Ref: CESR/03-317c). Following a number of years of practical use of the Standard, the fact that IFRS has now been implemented in all Member States, and the fact that the Transparency Directive¹ (TD) – which establishes the content requirements on periodic financial information of all issuer’s who have securities admitted to trading on a regulated market in Europe - was to be implemented by all Member States in January 2007, CESR decided to assess now the extent to which this Standard has in practice been applied by its Members.
11. This document represents the first step of this assessment which is conducted in two phases, the first is the self-assessment stage (the results of which are set out in this document) in which Members assess their application of each of the four principles of the standard by answering a number of questions that have been established for each principle against a set of benchmarks. Full details of each Member’s individual responses to the questionnaire (Ref: CESR/08-352) that was completed 16th of July 2008 can be found on CESR’s website (www.cesr.eu).
12. This first stage will be followed by the peer review stage which involves each Member’s assessment being assessed by their peers the results of which will be published later during the course of the year.
13. All four principles were assessed, with each being broken down into fundamental key issues with questions asked about each of these (see Annex for full list of questions). For each principle, benchmarks were established for the purposes of determining whether or not a Member was applying the principle.
14. The following two Members of CESR did not participate in this exercise: Austria and Iceland. Therefore these jurisdictions are classified as “non contributing” in accordance with the Methodology for self-assessment and peer review (Ref: CESR / 07-071b). The Czech Republic did not respond to the questionnaire, because it has not implemented the Transparency directive.
15. The cut-off date for the self-assessment was 5 August 2008.

Summary of the self-assessment of the principles

16. The following section of the report sets out a summary of CESR Member’s self assessment of their application of the principles.
17. It is divided into a number of sections, each one sets out the requirements of each principle, the benchmarks that were established for each of them, what the self assessment of each principle show and includes a graphical representation summarising how the Members answered each of the questions.

Principle 1

¹ Directive on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2004/109/EC (“TD”).



18. Set out below is a summary of how CESR Members have assessed themselves as applying principle 1 which requires that:

- All EU National Enforcers should always, as a minimum, consult the EECS database before taking an enforcement decision to be fully informed of existing precedent(s).
- If there are existing precedent(s), EU National Enforcers should take them into account in their own decision-making process.²
- In case of an apparent contradiction to a decision already taken in similar circumstances, the EU National Enforcer should normally discuss the facts and rationale surrounding the earlier decision with its originator before taking the decision, where practicable.
- Coordination is required for both ex-ante and ex-post enforcement decisions, including both decisions to take actions and non-action decisions, as well as decisions referred to in paragraph 14-15 of the October 2004 Guidance and pre-clearance.³
- In order to promote consistency, discussions between EU National Enforcers regarding significant decisions to be taken are required, especially in relation to dual or multi-listed issuers.
- In addition to normal database submission, the EU National Enforcer who takes a decision which is in apparent contradiction to existing precedent(s) should convey that decision to the EECS for discussion.

19. There were 8 questions asked in relation to this principle and the benchmarks for the assessment were:

20. **Full application of principle 1 requires that all 6 of following requirements are met:**

- the competent authority always consults the database for existing precedents (as per CESR October 2004 Guidance) before taking an enforcement decision;
- the competent authority takes into account existing precedents on the database in arriving at their enforcement decision;

² This is without prejudice to the authority of National Enforcers to apply their judgment, knowledge and experience to the particular circumstances of the cases.

³ Pursuant to §14-15 of the October 2004 Guidance:

14. *“Some EU National Enforcers may provide an opinion on a particular financial reporting issue before an issuers accounts have been finalised. Where an enforcer gives an opinion that represents the official view of the EU National Enforcer, then such a decision comes within the scope of principles 1 and 2 of Standard No 2”.*

15. *“Enforcers may investigate particular financial reporting issues adopted or to be adopted by an issuer and conclude that the treatment adopted or proposed is within the scope of the relevant standard. Such decisions constitute an enforcement decision.”*



- before taking an apparently contradictory significant decision the competent authority discusses the facts and rationale surrounding the earlier decision with the enforcer who made that decision;
- before taking a significant decision, when it is practicable, the competent authority discusses significant decisions with EU National Enforcers
 - a) on a bilateral basis;
 - b) on a multilateral basis; or
 - c) at EECS;
- in cases where a significant decision which is in apparent contradiction to existing precedent(s) is taken by a competent authority, the decision is submitted for discussion at EECS; and
- the competent authority applies the aforementioned with respect to both ex-ante and ex-post enforcement decisions, including the following types of decisions⁴:
 - a. decisions which come within the scope of § 14 of the October 2004 Guidance (including pre clearance)
 - b. decisions to take action
 - c. decisions which come within the scope of § 15 of the October 2004 Guidance (including decisions to take no action)

21. Partial application of principle 1 requires that all of the 5 following requirements are met:

- the competent authority always consults the database for existing precedents (as per CESR October 2004 Guidance) before taking an enforcement decision;
- the competent authority takes into account existing precedents on the database in arriving at their enforcement decision;
- before taking a significant decision, when it is practicable, the competent authority discusses significant decisions with EU National Enforcers
 - a) on a bilateral basis;
 - b) on a multilateral basis; or
 - c) at EECS;
- the competent authority applies the aforementioned with respect to both ex-ante and ex-post enforcement decisions, including the following types of decisions⁵:
 - a. decisions which come within the scope of § 14 of the October 2004 Guidance (including pre clearance)
 - b. decisions to take action
 - c. decisions which come within the scope of § 15 of the October 2004 Guidance (including decisions to take no action); and
- in cases where a significant decision which is in apparent contradiction to existing precedent(s) is taken by a competent authority, the decision is submitted for

⁴ In the event that such decisions are not taken at a national level then that specific type of decision will be considered as being not applicable.

⁵ In the event that you do not take such decisions at a national level the type of decision will be not applicable.



discussion at EECS.

22. Non application of principle 1 means that one of the following applies:

- the competent authority does not always consults the database for existing precedents (as per CESR October 2004 Guidance) before taking an enforcement decision;
- the competent authority does not take into account existing precedents on the database in arriving at their enforcement decision;
- before taking a significant decision, when it is practicable, the competent authority does not discuss significant decisions with EU National Enforcers
 - a) on a bilateral basis;
 - b) on a multilateral basis; or
 - c) at EECS; or
- the competent authority does not apply the aforementioned with respect to both ex-ante and ex-post enforcement decisions, including the following types of decisions⁶:
 - a. decisions which come within the scope of § 14 of the October 2004 Guidance (including pre clearance)
 - b. decisions to take action
 - c. decisions which come within the scope of § 15 of the October 2004 Guidance (including decisions to take no action)

What the self assessment of principle 1 shows

23. The self-assessment in relation to principle 1 show that the following **24** CESR Members have assessed themselves as **fully applying principle 1**:

- Belgium, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Spain, Sweden and UK.

24. The self-assessment in relation to principle 1 shows that **no** CESR Members have assessed themselves as **partially applying principle 1**.

⁶ In the event that you do not take such decisions at a national level the type of decision will be not applicable.



25. The self- assessment in relation to principle 1 shows that the following **2** CESR Members have assessed themselves as **not applying principle 1**:




- Bulgaria and Slovenia.

26. Therefore, all CESR Members except Bulgaria and Slovenia have assessed themselves as consulting the database and taking existing precedents into account before taking an enforcement decision, in the event that they were to take a relevant enforcement decision. However, please note that a significant number of Members have not taken relevant enforcement decisions to date.⁷

⁷ Before the cut off date, 12 out of 29 Members, i.e. approximately 40%, did not submit any enforcement decisions into the EECS database



Table 5
Principle 1: Summary of self assessment
 KEY:

Answer to question is no 
 Answer to question is not applicable 
 Answer to question is Yes 

Elements	BE	CZ	BG	DK	DE	EE	EL	ES	FR	IE	IS	IT	CY	LV	LT	LU	HU	MT	NL	NO	AT	PL	PT	SI	RO	SK	FI	SV	UK
Key question 1	1	2	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25			
Key question 2	1	2	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	
Key question 3a	1	2	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	
Key question 3b	1	2	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25		
Key question 3c	1	2	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25		
Key question 4	1	2	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	
Key question 5	1	2	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25		



Elements	BE	CZ	BG	DK	DE	EE	EL	ES	FR	IE	IS	IT	CY	LV	LT	LU	HU	MT	NL	NO	AT	PL	PT	SI	RO	SK	FI	SV	UK
Key question 6a	✓ <u>1</u>	✗	✓ <u>2</u>	✓ <u>3</u>	✓ <u>4</u>	✓ <u>5</u>	✓ <u>6</u>	✓ <u>7</u>	✓ <u>8</u>	✓ <u>9</u>	✗	✓ <u>10</u>	✓ <u>11</u>	✓ <u>12</u>	✓ <u>13</u>	✓ <u>14</u>	✓ <u>15</u>	✓ <u>16</u>	✓ <u>17</u>	✓ <u>18</u>	✗ <u>19</u>	✓ <u>20</u>	✓ <u>21</u>	✗ <u>22</u>	✓ <u>23</u>	✓ <u>24</u>	✓ <u>25</u>	✓ <u>26</u>	✓ <u>27</u>
Key question 6b	✓ <u>1</u>	✗	✓ <u>2</u>	✓ <u>3</u>	✓ <u>4</u>	✓ <u>5</u>	✓ <u>6</u>	✓ <u>7</u>	✓ <u>8</u>	✓ <u>9</u>	✗	✓ <u>10</u>	✓ <u>11</u>	✓ <u>12</u>	✓ <u>13</u>	✓ <u>14</u>	✓ <u>15</u>	✓ <u>16</u>	✓ <u>17</u>	✓ <u>18</u>	✗ <u>19</u>	✓ <u>20</u>	✓ <u>21</u>	✗ <u>22</u>	✓ <u>23</u>	✓ <u>24</u>	✓ <u>25</u>	✓ <u>26</u>	✓ <u>27</u>
Key question 6c	✓ <u>1</u>	✗	✓ <u>2</u>	✓ <u>3</u>	✓ <u>4</u>	✓ <u>5</u>	✓ <u>6</u>	✓ <u>7</u>	✓ <u>8</u>	✓ <u>9</u>	✗	✓ <u>10</u>	✓ <u>11</u>	✓ <u>12</u>	✓ <u>13</u>	✓ <u>14</u>	✓ <u>15</u>	✓ <u>16</u>	✓ <u>17</u>	✓ <u>18</u>	✗ <u>19</u>	✓ <u>20</u>	✓ <u>21</u>	✗ <u>22</u>	✓ <u>23</u>	✓ <u>24</u>	✓ <u>25</u>	✓ <u>26</u>	✓ <u>27</u>
Elements	BE	CZ	BG	DK	DE	EE	EL	ES	FR	IE	IS	IT	CY	LV	LT	LU	HU	MT	NL	NO	AT	PL	PT	SI	RO	SK	FI	SV	UK
Key question 7	✓ <u>1</u>	✗	✓ <u>2</u>	✓ <u>3</u>	✓ <u>4</u>	✓ <u>5</u>	✓ <u>6</u>	✓	✓ <u>7</u>	✓ <u>8</u>	✗	✓ <u>9</u>	✓ <u>10</u>	✓ <u>11</u>	✓ <u>12</u>	✓ <u>13</u>	✓ <u>14</u>	✓ <u>15</u>	✓ <u>16</u>	✓ <u>17</u>	✗ <u>18</u>	✓ <u>19</u>	✓ <u>20</u>	✗ <u>21</u>	✓ <u>22</u>	✓ <u>23</u>	✓ <u>24</u>	✓ <u>25</u>	✓ <u>26</u>
Elements	BE	CZ	BG	DK	DE	EE	EL	ES	FR	IE	IS	IT	CY	LV	LT	LU	HU	MT	NL	NO	AT	PL	PT	SI	RO	SK	FI	SV	UK
Key question 8a	✓ <u>1</u>	✗	○ <u>2</u>	✓ <u>3</u>	○ <u>4</u>	✓ <u>5</u>	✓ <u>6</u>	✓ <u>7</u>	✓ <u>8</u>	✓ <u>9</u>	✗	✓ <u>10</u>	✓ <u>11</u>	✗ <u>12</u>	✓ <u>13</u>	✓ <u>14</u>	✓ <u>15</u>	✓ <u>16</u>	○ <u>17</u>	✓ <u>18</u>	✗ <u>19</u>	✓ <u>20</u>	✓ <u>21</u>	✗ <u>22</u>	✓ <u>23</u>	✗ <u>24</u>	✓ <u>25</u>	✓ <u>26</u>	✓ <u>27</u>
Key question 8b	✓ <u>1</u>	✗	○ <u>2</u>	✓ <u>3</u>	✓ <u>4</u>	✓ <u>5</u>	✓ <u>6</u>	✓ <u>7</u>	✓ <u>8</u>	✓ <u>9</u>	✗	✓ <u>10</u>	✓ <u>11</u>	✓ <u>12</u>	✓ <u>13</u>	✓ <u>14</u>	✓ <u>15</u>	✓ <u>16</u>	✓ <u>17</u>	✓ <u>18</u>	✗ <u>19</u>	✓ <u>20</u>	✓ <u>21</u>	✗ <u>22</u>	✓ <u>23</u>	✗ <u>24</u>	✓ <u>25</u>	✓ <u>26</u>	✓ <u>27</u>
Key question 8c	✓ <u>1</u>	✗	○ <u>2</u>	✓ <u>3</u>	✓ <u>4</u>	✓ <u>5</u>	✓ <u>6</u>	✓ <u>7</u>	✓ <u>8</u>	✓ <u>9</u>	✗	✓ <u>10</u>	✓ <u>11</u>	✓ <u>12</u>	✓ <u>13</u>	✓ <u>14</u>	✓ <u>15</u>	✓ <u>16</u>	✓ <u>17</u>	✓ <u>18</u>	✗ <u>19</u>	✓ <u>20</u>	✓ <u>21</u>	✗ <u>22</u>	✓ <u>23</u>	✓ <u>24</u>	✓ <u>25</u>	✓ <u>26</u>	✓ <u>27</u>



Principle 2

27. Set out below is a summary of how CESR Members have assessed themselves as applying principle 2 which requires that:

- EU National Enforcers should submit enforcement decisions into the database.
- Enforcement decisions that meet any of the criteria set out in paragraph 20 of the October 2004 Guidance are relevant for submission into the database⁸.
- EU National Enforcers should submit both
 - a) decisions which come within the scope of § 14-15 of the October 2004 Guidance (e.g. ex-ante and ex-post relevant enforcement decisions, including both decisions to take actions and non-action decisions as well as pre-clearance;
 - b) interim decisions referred to in paragraph 31-32 of the October 2004 Guidance
- The relevant enforcement decisions which constitute the official view of the National Enforcer should be submitted into the database. The basis upon which a decision qualifies as an “official view” depends on the National Enforcer’s internal organisation; therefore differences in understanding the definition of official view should be carefully considered.
- When submitting an enforcement decision into the database, the National Enforcer should ensure the completeness of the input and its overall comprehensibility.
- Relevant decisions should be made available for the database within a reasonable time after decisions are taken, taking into account the nature and complexity of the particular decision.

28. There were 11 questions asked in relation to this principle and the benchmarks for the assessment were:

⁸ According to § 20 of the October 2004 Guidance, “*Principle 2 of Standard No. 2 requires details of decisions to be made available in accordance with CESR policies. EU National Enforcers may take many different types of enforcement decisions, not all of which will be relevant for submission to the database. To determine which decisions are relevant, enforcers should consider the following criteria:*

- *Whether a material misstatement in financial information has been detected in line with that envisaged by principle 16 of CESR Standard No 1;*
- *Whether dual, multiple or cross border listings are involved;*
- *Whether a decision apparently contradicts a previous decision on the database;*
- *Whether the decision is expected to potentially impact harmonised financial reporting in Europe or have a major impact on a financial market;*
- *Whether the decision will be of interest to other EU National Enforcers (this judgement is likely to be informed by EECS discussions);*
- *Whether there is a risk of significantly different treatments between companies and jurisdictions;*
- *Whether a decision is likely to have a significant impact on other issuers;*
- *Whether a decision is taken on the basis of principles under IAS 1 and 8 because an issue is not covered by a specific standard; and*
- *Whether a decision has been overruled by an appeals committee or Court.*



29. Full application of principle 2 requires that all 7 of the following requirements are met:

- The competent authority submits decisions into the database;
- The competent authority submits the enforcement decisions to the database where any of the following criteria – as set out in paragraph 20 of October 2004 Guidance (“relevant decision”) – applies:
 - whether a material misstatement in financial information has been detected in line with that envisaged by principle 16 of CESR Standard No 1;
 - whether dual or multiple listings are involved;
 - whether a decision apparently contradicts a previous decision on the database;
 - whether the decision is expected to potentially impact harmonized financial reporting in Europe or have a major impact on a financial market;
 - whether the decision will be of interest to other EU National Enforcers (this judgement is likely to be informed by EECS discussions);
 - whether there is a risk of significant different treatments between companies and jurisdictions;
 - whether a decision is likely to have a significant impact on other issuers;
 - whether a decision is taken on the basis of principles under IAS 1 and 8 because an issue is not covered by a specific standard; and
 - whether a decision has been overruled by an appeals committee or Court.
- The competent authority does not have a formal or informal process in place to assess whether or not a decision should be submitted into the database;
- The competent authority submits into the database either ex-ante and ex-post enforcement decisions, including the following types of decisions⁹:
 - a. decisions to take actions;
 - b. decisions which come within the scope of § 15 of the October 2004 Guidance (including decisions to take no action)
 - c. decisions which come within the scope of § 14 of the October 2004 Guidance (including pre clearance)
 - d. interim decisions referred to in paragraph 31-32 of the October 2004 Guidance¹⁰
- The decisions the competent authority submits to the database represent its “official view”;
- When submitting a decision to the database the competent authority ensures the completeness of the input and its overall comprehensibility in accordance with paragraph 22 and 23 of the Guidance of October 2004;
- The competent authority submits the relevant decisions to the database within a reasonable time after decisions are taken.

⁹ In the event that you do not take one of the types of decision at a national level the type of decision will be not applicable.

¹⁰ Interim decisions are not relevant per principle 1 which is why they are only referred to in principle 2.



30. Partial application of principle 2 requires that all 7 of the following requirements are met:

- The competent authority submits decisions into the database;
- The competent authority submits the enforcement decisions to the database where any of the following criteria – as set out in paragraph 20 of October 2004 Guidance (“relevant decision”) – applies:
 - whether a material misstatement in financial information has been detected in line with that envisaged by principle 16 of CESR Standard No 1;
 - whether dual or multiple listings are involved;
 - whether a decision apparently contradicts a previous decision on the database;
 - whether the decision is expected to potentially impact harmonized financial reporting in Europe or have a major impact on a financial market;
 - whether the decision will be of interest to other EU National Enforcers (this judgement is likely to be informed by EECS discussions);
 - whether there is a risk of significant different treatments between companies and jurisdictions;
 - whether a decision is likely to have a significant impact on other issuers;
 - whether a decision is taken on the basis of principles under IAS 1 and 8 because an issue is not covered by a specific standard; and
 - whether a decision has been overruled by an appeals committee or Court.
- The competent authority has a formal or informal process in place to assess whether or not a decision should be submitted into the database;
- The competent authority submits into the database both ex-ante and ex-post enforcement decisions, including the following types of decisions¹¹:
 - a. decisions to take actions;
 - b. decisions which come within the scope of § 15 of the October 2004 Guidance (including decisions to take no action)
 - c. decisions which come within the scope of § 14 of the October 2004 Guidance (including pre clearance)
 - d. interim decisions referred to in paragraph 31-32 of the October 2004 Guidance¹²
- The decisions the competent authority submits to the database represent its “official view”;
- When submitting a decision to the database the competent authority does not ensure the completeness of the input and its overall comprehensibility in accordance with paragraph 22 and 23 of the Guidance of October 2004;
- The competent authority submits the relevant decisions to the database within a reasonable time after decisions are taken.

¹¹ In the event that you do not take one of the types of decision at a national level the type of decision will be not applicable.

¹² Interim decisions are not relevant per principle 1 which is why they are only referred to in principle 2.

31. Non application of principle 2 means that one of the following applies:

- The competent authority does not submit, or has not yet submitted, decisions into the database;
- The competent authority does not submit the enforcement decisions to the database where any of the following criteria – as set out in paragraph 20 of October 2004 Guidance (“relevant decision”) – applies:
 - whether a material misstatement in financial information has been detected in line with that envisaged by principle 16 of CESR Standard No 1;
 - whether dual or multiple listings are involved;
 - whether a decision apparently contradicts a previous decision on the database;
 - whether the decision is expected to potentially impact harmonized financial reporting in Europe or have a major impact on a financial market;
 - whether the decision will be of interest to other EU National Enforcers (this judgement is likely to be informed by EECS discussions);
 - whether there is a risk of significant different treatments between companies and jurisdictions;
 - whether a decision is likely to have a significant impact on other issuers;
 - whether a decision is taken on the basis of principles under IAS 1 and 8 because an issue is not covered by a specific standard; and
 - whether a decision has been overruled by an appeals committee or Court.
- The competent authority has not a formal or informal process in place to assess whether or not a decision should be submitted into the database;
- The competent authority does not submit into the database both ex-ante and ex-post enforcement decisions, including the following types of decisions¹³:
 - a. decisions to take actions;
 - b. decisions which come within the scope of § 15 of the October 2004 Guidance (including decisions to take no action)
 - c. decisions which come within the scope of § 14 of the October 2004 Guidance (including pre clearance)
 - d. interim decisions referred to in paragraph 31-32 of the October 2004 Guidance¹⁴
- The decisions the competent authority submits to the database do not represent their “official view”;
- The competent authority does not submit the relevant decisions to the database within a reasonable time after decisions are taken.

What the self assessment of principle 2 shows

¹³ In the event that you do not take one of the types of decision at a national level the type of decision will be not applicable.

¹⁴ Interim decisions are not relevant per principle 1 which is why they are only referred to in principle 2.






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32. The self-assessment in relation to principle 2 shows that the following **25** CESR Members have assessed themselves as **fully applying principle 2**:
- Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Spain, Sweden and UK.
33. The self- assessment in relation to principle 2 shows that the following CESR Member has assessed itself as **not applying principle 2**:
- Slovenia
34. In Czech Republic the Transparency directive is not implemented and did not respond. Poland has not always submitted the relevant decisions to the EECS database within a reasonable timeframe after the decisions were taken. Slovenia has not submitted decisions to the EECS database



Table 6
Principle 2: Summary of self assessment

KEY:

Answer to question is no 
 Answer to question is not applicable 
 Answer to question is Yes 

Elements	BE	CZ	BG	DK	DE	EE	EL	ES	FR	IE	IS	IT	CY	LV	LT	LU	HU	MT	NL	NO	AT	PL	PT	SI	RO	SK	FI	SV	UK
Key question 1	1	1	2	3	4	5	6	7	8	9	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27
Key question 2a	1	1	2	3	4	5	6	7	8	9	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27
Key question 2b	1	1	2	3	4	5	6	7	8	9	9	9	10	11	12	13	14	15	16	17	18	19	20	20	21	22	23	24	25
Key question 2c	1	1	2	3	4	5	6	7	8	9	9	9	10	11	12	13	14	15	16	17	18	19	20	20	21	22	23	24	25
Key question 2d	1	1	2	3	4	5	6	7	8	9	9	8	9	10	11	12	13	14	15	16	17	18	19	19	20	21	22	23	24
Key question 2e	1	1	2	3	4	5	6	7	8	9	9	9	10	11	12	13	14	15	16	17	18	19	20	20	21	22	23	24	25
Key question 2f	1	1	2	3	4	5	6	7	8	9	9	9	10	11	12	13	14	15	16	17	18	19	20	20	21	22	23	24	25
Key question 2g	1	1	2	3	4	5	6	7	8	9	9	9	10	11	12	13	14	15	16	17	18	19	20	20	20	21	22	23	24
Key question 2h	1	1	2	3	4	5	6	7	8	9	9	9	10	11	12	13	14	15	16	17	18	19	20	20	21	22	23	24	25
Key question 2i	1	1	2	3	4	5	6	7	8	9	9	9	10	11	12	13	14	15	16	17	17	18	19	19	20	21	22	23	24
Key question 3	1	1	2	3	4	5	6	7	8	9	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27
Elements	BE	CZ	BG	DK	DE	EE	EL	ES	FR	IE	IS	IT	CY	LV	LT	LU	HU	MT	NL	NO	AT	PL	PT	SI	RO	SK	FI	SV	UK



Key question 4a	✓ 1	✗	✓ 2	✓ 3	✓	✓ 4	✓ 5	✓ 6	✓ 7	✓ 8	✗	✓ 9	✓ 10	✓ 11	✓ 12	✓ 13	✓ 14	✓ 15	✓ 16	✓ 17	✗ 18	✓ 19	✓ 20	✗ 21	✓ 22	✓ 23	✓ 24	✓ 25	✓ 26
Key question 4b	✓ 1	✗	✓ 2	✓ 3	✓ 4	✓ 5	✓ 6	✓ 7	✓ 8	✓ 9	✗	✓ 10	✓ 11	✓ 12	✓ 13	✓ 14	✓ 15	✓ 16	✓ 17	✓ 18	✗ 19	✓ 20	✓ 21	✗	✓ 22	✓ 23	✓ 24	✓ 25	✓ 26
Key question 4c	✓ 1	✗	✓ 2	✓ 3	○ 4	✓ 5	✓ 6	✓ 7	✓ 8	✓ 9	✗	✓ 10	✓ 11	✗ 12	✓ 13	✓ 14	✓ 15	✓ 16	○ 17	✓ 18	✗ 19	✓ 20	✓ 21	✗	✓ 22	✗ 23	✓ 24	✓ 25	✓ 26
Elements	BE	CZ	BG	DK	DE	EE	EL	ES	FR	IE	IS	IT	CY	LV	LT	LU	HU	MT	NL	NO	AT	PL	PT	SI	RO	SK	FI	SV	UK
Key question 4d	✓ 1	✗	✓ 2	✓ 3	○ 4	✓ 5	✓ 6	✓ 7	✓ 8	✓ 9	✗	✓ 10	✓ 11	✓ 12	✓ 13	✓ 14	✓ 15	✓ 16	✗ 17	✓ 18	✗ 19	✓ 20	✓ 21	✗ 22	✓ 23	✓ 24	✓ 25	✓ 26	✓ 27
Elements	BE	CZ	BG	DK	DE	EE	EL	ES	FR	IE	IS	IT	CY	LV	LT	LU	HU	MT	NL	NO	AT	PL	PT	SI	RO	SK	FI	SV	UK
Key question 5.	✓ 1	✗	✓ 2	✓ 3	✓ 4	✓ 5	✓ 6	✓ 7	✓ 8	✓ 9	✗	✓ 10	✓ 11	✓ 12	✓ 13	✓ 14	✓ 15	✓ 16	✓ 17	✓ 18	✗ 19	✓ 20	✓ 21	✗ 22	✓ 23	✓ 24	✓ 25	✓ 26	✓ 27
Elements	BE	CZ	BG	DK	DE	EE	EL	ES	FR	IE	IS	IT	CY	LV	LT	LU	HU	MT	NL	NO	AT	PL	PT	SI	RO	SK	FI	SV	UK
Key question 6.	✓ 1	✗	✓ 2	✓ 3	✓ 4	✓ 5	✓ 6	✓ 7	✓ 8	✓ 9	✗	✓ 10	✓ 11	✓ 12	✓ 13	✓ 14	✓ 15	✓ 16	✓	✓ 17	✗ 18	✓ 19	✓ 20	✗ 21	✓ 22	✓ 23	✓ 24	✓ 25	✓ 26
Elements	BE	CZ	BG	DK	DE	EE	EL	ES	FR	IE	IS	IT	CY	LV	LT	LU	HU	MT	NL	NO	AT	PL	PT	SI	RO	SK	FI	SV	UK
Key question 7.	✓ 1	✗	✓ 2	✓ 3	✓ 4	✓ 5	✓ 6	✓ 7	✓ 8	✓ 9	✗	✓ 10	✓ 11	✓ 12	✓ 13	✓ 14	✓ 15	✓ 16	✓	✓ 17	✗ 18	✓ 19	✓ 20	✗ 21	✓ 22	✓ 23	✓ 24	✓ 25	✓ 26
Key issue 8.	✓ 1	✗	✓ 2	✓ 3	✗	✓ 4	✓ 5	✓	✓ 6	✓ 7	✗	✓ 8	✓ 9	✓ 10	✓ 11	✓ 12	✓ 13	✓ 14	✓ 15	✓ 16	✗ 17	✓ 18	✓ 19	✗ 20	✓ 21	✗	✓ 22	✓ 23	✓ 24
Key question 9.	✓ 1	✗	✓ 2	✓ 3	✓ 4	✓ 5	✓ 6	✓ 7	✓ 8	✓ 9	✗	✓ 10	✓ 11	✗ 12	✓ 13	✓ 14	✓ 15	✓ 16	✓	✓ 17	✗ 18	✓ 19	✓ 20	✗ 21	✓ 22	✗	✓ 23	✓ 24	✓ 25
Elements	BE	CZ	BG	DK	DE	EE	EL	ES	FR	IE	IS	IT	CY	LV	LT	LU	HU	MT	NL	NO	AT	PL	PT	SI	RO	SK	FI	SV	UK
Key question 10.	✓ 1	✗	✓ 2	✓ 3	✗ 4	✓ 5	✓ 6	✓ 7	✓ 8	✓ 9	✗	✓ 10	✓ 11	✗ 12	✓ 13	✓ 14	✗ 15	✓ 16	✓ 17	✓ 18	✗ 19	✓ 20	✓ 21	✗ 22	✓ 23	✓ 24	✓ 25	✓ 26	✓ 27
Key question 11.	✓ 1	✗	✓ 2	✓ 3	✓ 4	✓ 5	✓ 6	✓ 7	✓ 8	✓ 9	✗	✓ 10	✓ 11	✗ 12	✓ 13	✓ 14	✗ 15	✓ 16	✓ 17	✓ 18	✗ 19	✓ 20	✓ 21	✗ 22	✓ 23	✓ 24	✓ 25	✓ 26	✓ 27



Principle 3

35. Set out below is a summary of how CESR Members have assessed themselves as applying principle 3 which requires that:

- EU National Enforcers should be subject to a confidentiality regime that is comparable and compatible with the confidentiality regimes securities regulators are subject to under the EU legislation **and** the CESR MoU on exchange of information (CESR/05-335)
- ¹⁵.

36. There were 4 questions asked in relation to this principle (please refer to the Annex explaining the basis of the assessment of principle 3 which deals with the confidentiality regime) and the benchmarks for the assessment were:

37. Full application of principle 3 requires that all 4 of the following requirements are met:

- The competent authority as an EU National Enforcer is subject to a confidentiality regime that is comparable and compatible with the confidentiality regimes of the relevant EU Directives;
- Information is exchanged pursuant to the provisions of this regime;
- The EU National Enforcers in the Member State of the competent authority are subject to a confidentiality regime that is comparable and compatible with the confidentiality regime of the CESR MoU;¹⁶
- Information is exchanged pursuant to the provisions of this regime.

38. Partial application is not applicable with regard to principle 3

39. Non application of principle 3 means that one of the following applies:

- The competent authority as an EU National Enforcer is not subject to a confidentiality regime that is comparable and compatible with the confidentiality regimes of the relevant EU Directives;
- Information is not exchanged pursuant to the provisions of this regime;
- The EU National Enforcers in the Member State of the competent authority are not subject to a confidentiality regime that is comparable and compatible with the confidentiality regime of the CESR MoU;¹⁷
- Information is not exchanged pursuant to the provisions of this regime.

¹⁵ Note that under Article 6 of the CESR MOU, information exchange may fall both within the scope of the EU directives or outside its scope in which case the CESR MOU provisions apply.

¹⁶ In accordance with Article 6 MMoU information exchange might fall either under the scope of any of the relevant EU Directives or under the scope of the CESR MMoU.

¹⁷ In accordance with Article 6 MMoU information exchange might fall either under the scope of any of the relevant EU Directives or under the scope of the CESR MMoU.



What the self assessment of principle 3 shows




40. The self- assessment in relation to principle 3 shows that the following **24** CESR Members have assessed themselves as **fully applying principle 3**:
 - Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Norway, Poland, Portugal, Romania, Slovakia, Spain, Sweden and UK.
41. Partial application is not applicable for this Principle.
42. **2** CESR Members assessed itself as **not applying principle 3**:
 - Netherlands and Slovenia
43. In both the Netherlands and Slovenia information is not exchanged pursuant to the provisions of the regime of the relevant directives (Market Abuse directive, Prospectus Directive and Transparency Directive), and in the Czech Republic the Transparency directive is not implemented. In the Netherlands this is because the EU National Enforcer cannot share information with other oversight bodies as the Transparency Directive had not been implemented at the time of the assessment.¹⁸ In Slovenia exchange of information only applies in general, but not with regard to exchanging information for submission to the EECS database or exchange of views regarding this kind of enforcement decisions

¹⁸ The AFM considers itself to be in full compliance with CESR Standard No.2 since the Transparency Directive came into force in the Netherlands on 1 January 2009.



Table 7
Principle 3: Summary of self assessment

KEY

Answer to question no  Answer to question is not applicable  Answer to question is Yes 

Elements	BE	CZ	BG	DK	DE	EE	EL	ES	FR	IE	IS	IT	CY	LV	LT	LU	HU	MT	NL	NO	AT	PL	PT	SI	RO	SK	FI	SV	UK
Key question 1.			1	2	3	4	5		6	7		8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
Key question 2.			1	2	3	4	5	6	7	8		9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26
Key question 3.			1	2	3	4	5		6	7		8	9	10	11	12	13	14	15		16	17	18	19	20	21	22	23	24
Key question 4.			1	2	3	4	5	6	7	8		9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26



Principle 4

44. Set out below is a summary of how CESR Members have assessed themselves as applying principle 4 which requires that:
- All EU National Enforcers of standards on financial information, whether CESR Members or not, should participate in the European Enforcers Coordination Sessions (EECS).
 - EU National Enforcers should discuss selected enforcement decisions taken at national level with the other EECS members.
 - EU National Enforcers should discuss experiences in the application of standards on enforcement with the other EECS members.
45. There were 6 questions asked in relation to this principle and the benchmarks for the assessment were:
46. **Full application of principle 4 requires that all of the following 4 requirements are met:**
- The competent authority participates in the EECS meetings;
 - Participation at EECS meetings is 90%;
 - The competent authority discusses selected enforcement decisions taken at national level with EU National Enforcers at the EECS meetings;
 - The competent authority identifies and discusses experiences in the application at a national level of standards of enforcement at EECS;
 - The competent authority identifies and discusses issues that are not covered by financial reporting standards or which may be affected by conflicting interpretations for referral to standard setting or interpretative bodies such as IASB or IFRIC.¹⁹
47. **Partial application of principle 4 requires that all 3 of the following requirements are met:**
- The competent authority participates in the EECS meetings;
 - Participation at EECS meetings is 60%;
 - The competent authority discusses selected enforcement decisions taken at national level with EU National Enforcers at the EECS meetings;
 - The competent authority identifies and discusses experiences in the application at a national level of standards of enforcement at EECS.
48. **Non application of principle 4 means that one of the following applies:**
- The competent authority does not participate in the EECS meetings;
 - Participation at EECS meetings is less than 60%;
 - The competent authority does not discuss selected enforcement decisions taken at national level with EU National Enforcers at the EECS meetings;
 - The competent authority does not identify and discusses experiences in the application at a national level of standards of enforcement at EECS.

¹⁹ See paragraph 6 2nd bullet of the Guidance of October 2004.



What the self assessments of principle 4 shows

49. The self-assessment in relation to principle 4 shows that the following **15** CESR Members have assessed themselves as **fully applying principle 4**: Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain and UK.
50. The self-assessment in relation to principle 4 shows that **7** CESR Members (Cyprus, Estonia, Greece²⁰, Hungary, Netherlands, Romania and Sweden) only **partially apply principle 4** because they have not attended 90% of EECS meetings or did not give a positive reply to questions 6, but discuss decisions to be taken – where practicable – at EECS meetings and identify and discuss issues that are not covered by financial reporting standards.
51. The self-assessment in relation to principle 4 shows that **7** CESR Members (Bulgaria, Latvia, Lithuania, Malta, Slovakia and Slovenia) **not apply principle 4** because they have not attended 60% of EECS meetings and / or discuss decisions to be taken – where practicable – at EECS meetings and / or identify and discuss issues that are not covered by financial reporting standards.
52. The following table sets out the attendance of Members at EECS meetings.

²⁰ The HCMC self-assessed as partially implementing Principle 4. The HCMC has participated in 13 meetings of the EECS, which represent a 52% participation at the EECS meetings and not 60% (which corresponds to an attendance in 15 meetings of the EECS). The relevant benchmark of Principle 4 requests both a positive answer to be given to q. 1-3-5 **and** participation at EECS to be at 60%. The HCMC self assessed as fulfilling the first condition and considers that it is close to the 60% participation threshold. The benchmark for a jurisdiction to be not implementing Principle 4, is that there is a negative response to either q. 1-3-5 **and** participation at EECS is less than 60%, which is not the case for the HCMC within the framework of this self-assessment.

Table 8
Attendance of EECS meetings
(between 1 January 2005 and 5 July 2008 the EECS met 25 times)

Member	Meetings attended									Rating in %	Total meetings applicable
	0-3	3-6	6-9	9-12	12-15	15-18	18-21	21-24	24+		
Austria**										-	25
Belgium									25	100	25
Bulgaria*	0									0	11
Cyprus								21		84	25
Czech Rep	0									-	25
Denmark									25	100	25
Estonia								23		92	25
Finland									25	100	25
France									25	100	25
Germany									24	96	25
Greece					13					52	25
Hungary***						16.5				66	25
Iceland**										-	25
Ireland									25	100	25
Italy									25	100	25
Latvia***	1.5									6	25
Lithuania			7							28	25
Luxembourg									25	100	25
Malta	0									0	25
Netherlands									25	100	25
Norway									25	100	25
Poland									24	96	25
Portugal									25	100	25
Romania*			7							64	11
Slovakia	0									0	25
Slovenia	0									0	25
Spain									25	100	25
Sweden***							19.5			78	25
UK									24	96	25

* Bulgaria and Romania entered the EU on 1 January 2007. Between that date and 5 July 2008, the EECS met 11 times.

** non contributing country

*** in case an exact number for meeting attendance was not provided, the average of the interval was considered.



Table 9
Principle 4: Summary of self assessment
 KEY:

Answer to question is no 
 Answer to question is applicable 
 Answer to question is not applicable 
 Answer to question is Yes 

Elements	BE	CZ	BG	DK	DE	EE	EL	ES	FR	IE	IS	IT	CY	LV	LT	LU	HU	MT	NL	NO	AT	PL	PT	SI	RO	SK	FI	SV	UK
Key question 1.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27		
Key question 2a	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29
Key question 2b	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29
Key question 2c	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29
Key question 2d	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29
Key question 2e	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29
Key question 2f	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29
Key question 2g	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29
Key question 2h	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29
Key question 2i	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29
Elements	BE	CZ	BG	DK	DE	EE	EL	ES	FR	IE	IS	IT	CY	LV	LT	LU	HU	MT	NL	NO	AT	PL	PT	SI	RO	SK	FI	SV	UK
Key question 3.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27		
Key question 4.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27		
Elements	BE	CZ	BG	DK	DE	EE	EL	ES	FR	IE	IS	IT	CY	LV	LT	LU	HU	MT	NL	NO	AT	PL	PT	SI	RO	SK	FI	SV	UK
Key question 5.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27		
Elements	BE	CZ	BG	DK	DE	EE	EL	ES	FR	IE	IS	IT	CY	LV	LT	LU	HU	MT	NL	NO	AT	PL	PT	SI	RO	SK	FI	SV	UK
Key question 6.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26			



Overall benchmarks of the principles

53. Following the assessment of Members' application of each of the 4 principles, in order to be able to rank the Members in terms of their application of Standard No 2 as a whole, an overall benchmark categorisation was established. Please refer to the CESR Methodology for self assessment and the Peer Review Tool (CESR/07-071).
54. The overall benchmarks for a Member's application of the principles as a whole were set on the basis of what as a minimum CESR considered that CESR Members should be doing in order to be able to be considered as applying the spirit of the principles.
55. As the principles are inextricably linked and equally important, CESR considers all principles to be key principles and as such is not differentiating between them. Therefore the key principles are as follows:
- Key principles: 1, 2, 3 and 4
56. Having established that all principles are key, CESR considered how to rank Members application of the principles in order to reflect the importance of the principles and weight them accordingly. In order to do this, the following was established:

Overall rating for Standard No 2:

Full application of Standard No 2

- An overall rating of full application of the standard equates to a maximum rating of 100% of the principles requiring full application of principles 1, 2, 3 and 4 – with an individual rating of 25% per principle that is fully applied being allocated. To achieve this rating, all four principles would need to be fully applied.
- From the self-assessment exercise, it appears that the following **13** CESR Members fully apply Standard No 2 : Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, Norway, Poland, Portugal, Spain and the UK.

Partial application of Standard No 2

- An overall rating of partial application of the standard requires that as a minimum Principles 1, 2 and 4¹ are partially applied – with an individual rating of 10% per principle that is only partially applied being allocated.

¹ all principles that can be partially applied as there can be no partial application for principle 3.



- From the self-assessment exercise, it appears that the following **5** CESR Members partially apply Standard No 2 : Cyprus, Estonia, Greece, Hungary and Sweden.

Non application of Standard No 2

- An overall rating of non application of the standard means that any one of the principles is not applied and results in a nil rating.
- From the self-assessment exercise, it appears that the following **9** CESR Members partially apply Standard No 2 : Bulgaria, Czech Republic, Latvia, Lithuania, Malta, Netherlands, Romania, Slovakia, and Slovenia.

57. The overall assessment rating for each Member is then calculated by adding the total rating achieved for the key principles.



Annex 1 : Questionnaire on Standard 2

PRINCIPLE 1

Principle 1	Ex ante and ex post enforcement decisions taken by competent independent administrative authorities or by bodies delegated by these authorities (“EU National Enforcers”) should take into account existing precedents consistent with the timing and feasibility constraints which characterize the decision. Where practicable, discussions with other EU National Enforcers should take place before significant decisions are taken.
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Key issues

2. All EU National Enforcers should always, as a minimum, consult the EECS database before taking an enforcement decision to be fully informed of existing precedent(s).
3. If there are existing precedent(s), EU National Enforcers should take them into account in their own decision-making process¹.
4. In case of apparent contraction to a decision already taken in similar circumstances, the EU national enforcer should normally discuss the facts and rationale surrounding the earlier decision with its originator before taking the decision, where practicable.
5. Coordination is required for both ex-ante decisions and ex-post enforcement decisions, including both decisions to take actions and non-action decisions, as well as decisions referred to in paragraph 14-15 of the October 2004 Guidance and pre-clearance.²
6. In order to promote consistency, discussions between EU National Enforcers regarding significant decisions to be taken are required, especially in relation to dual or multi-listed issuers.
7. In addition to normal database submission, the EU National Enforcer who takes a decision which is in apparent contradiction to existing precedent(s) should convey that decision to the EECS for discussion.

¹ This is without prejudice to the authority of national enforcers to apply their judgment, knowledge and experience to the particular circumstances of the cases.

² Pursuant to §14-15 of the October 2004 Guidance:

14. “Some EU National Enforcers may provide an opinion on a particular financial reporting issue before an issuers accounts have been finalised. Where an enforcer gives an opinion that represents the official view of the EU National Enforcer, then such a decision comes within the scope of principles 1 and 2 of Standard No 2”.

15. “Enforcers may investigate particular financial reporting issues adopted or to be adopted by an issuer and conclude that the treatment adopted or proposed is within the scope of the relevant standard. Such decisions constitute an enforcement decision.”



Key questions

1. Does your authority always consult the database for existing precedents (as per CESR October 2004 Guidance) before taking an enforcement decision?
2. Does your authority take into account existing precedents on the database in arriving at your enforcement decision?
3. Does your authority follow existing precedents in similar circumstances in arriving at your decision in case of the following types of decisions:
 - a. decisions which come within the scope of § 14 of the October 2004 Guidance (including pre clearance)
 - b. decisions to take action
 - c. decisions which come within the scope of § 15 of the October 2004 Guidance (including decisions to take no action)
4. Before taking an apparently contradictory significant decision does your authority discuss the facts and rationale surrounding the earlier decision with the enforcer who made that decision?
5. Are there circumstances in which you do not consult with EU national enforcers before taking a significant decision. Please describe.
6. Before taking a significant decision, when it is practicable, does your authority discuss significant decisions with EU National Enforcers
 - a) on a bilateral basis;
 - b) on a multilateral basis; or
 - c) at EECS
7. In cases where a significant decision which is in apparent contradiction to existing precedent(s) is taken by your authority, do you submit it for discussion at EECS?
8. Do the answers you have given to preceding questions 1, 2, 4, 5, 6 apply with respect to both ex-ante and ex-post enforcement decisions, including the following types of decisions¹:
 - a. decisions which come within the scope of § 14 of the October 2004 Guidance (including pre clearance)
 - b. decisions to take action
 - c. decisions which come within the scope of § 15 of the October 2004 Guidance (including decisions to take no action)

Benchmarks

¹ In the event that you do not take such decisions at a national level the type of decision will be not applicable.



Fully applied

If a positive answer is given to questions 1 and 2 and 4 and 6 and 7 and 8 (a)-(c) where applicable.

Partially applied

If a positive answer is given to questions 1 and 2 and 6 and 7 and 8 (a)-(c) and a negative answer is given to question 4.

Not applied

Inability to give a positive answer to either questions 1 or 2 or 6 or 7 or 8(a)-(c) where applicable.

PRINCIPLE 2

Principle 2	Within a reasonable time after decisions are taken by an EU National Enforcer, details of these decisions should be made available to the other EU National Enforcers in accordance with the policies developed by CESR.
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Key issues

1. EU national enforcers should submit enforcement decisions into the database.
2. Enforcement decisions that meet any of the criteria set out in paragraph 20 of the October 2004 Guidance are relevant for submission into the database¹.
3. EU national enforcers should submit both
 - a) decisions which come within the scope of § 14-15 of the October 2004 Guidance (e.g. ex-ante and ex-post relevant enforcement decisions, including both decisions to take actions and non-action decisions as well as pre-clearance;

¹ According to § 20 of the October 2004 Guidance, “Principle 2 of Standard No. 2 requires details of decisions to be made available in accordance with CESR policies. EU National Enforcers may take many different types of enforcement decisions, not all of which will be relevant for submission to the database. To determine which decisions are relevant, enforcers should consider the following criteria:

- Whether a material misstatement in financial information has been detected in line with that envisaged by principle 16 of CESR Standard No 1;
- Whether dual, multiple or cross border listings are involved;
- Whether a decision apparently contradicts a previous decision on the database;
- Whether the decision is expected to potentially impact harmonised financial reporting in Europe or have a major impact on a financial market;
- Whether the decision will be of interest to other EU National Enforcers (this judgement is likely to be informed by EECS discussions);
- Whether there is a risk of significantly different treatments between companies and jurisdictions;
- Whether a decision is likely to have a significant impact on other issuers;
- Whether a decision is taken on the basis of principles under IAS 1 and 8 because an issue is not covered by a specific standard; and
- Whether a decision has been overruled by an appeals committee or Court”.



b) interim decisions referred to in paragraph 31-32 of the October 2004 Guidance

4. The relevant enforcement decisions which constitute the official view of the national enforcer should be submitted into the database. The basis upon which a decision qualifies as an “official view” depends on the national enforcer’s internal organisation; therefore differences in understanding the definition of official view should be carefully considered.
5. When submitting an enforcement decision into the database, the national enforcer should ensure the completeness of the input and its overall comprehensibility.
6. Relevant decisions should be made available for the database within a reasonable time after decisions are taken, taking into account the nature and complexity of the particular decision.

Key questions

1. Is your authority submitting decisions into the database?
2. Does your authority submit the enforcement decisions to the database where any of the following criteria – as set out in paragraph 20 of October 2004 Guidance (“relevant decision”) – apply:
 - whether a material misstatement in financial information has been detected in line with that envisaged by principle 16 of CESR Standard No 1;
 - whether dual or multiple listings are involved;
 - whether a decision apparently contradicts a previous decision on the database;
 - whether the decision is expected to potentially impact harmonized financial reporting in Europe or have a major impact on a financial market;
 - whether the decision will be of interest to other EU National Enforcers (this judgement is likely to be informed by EECS discussions);
 - whether there is a risk of significant different treatments between companies and jurisdictions;
 - whether a decision is likely to have a significant impact on other issuers;
 - whether a decision is taken on the basis of principles under IAS 1 and 8 because an issue is not covered by a specific standard; and
 - whether a decision has been overruled by an appeals committee or Court.
 - apply?If any of the said criteria is not applied, please provide details.
3. Does your authority have a formal or informal process in place to assess whether or not a decision should be submitted into the



database? Please provide a short description.

4. Do you submit into the database both ex-ante and ex-post enforcement decisions, including the following types of decisions¹:
 - e. decisions to take actions;
 - f. decisions which come within the scope of § 15 of the October 2004 Guidance (including decisions to take no action)
 - g. decisions which come within the scope of § 14 of the October 2004 Guidance (including pre clearance)
 - h. interim decisions referred to in paragraph 31-32 of the October 2004 Guidance²
5. Do the decisions submitted by your authority to the database represent your “official view”? Please specify what is classified as an “official view” by your authority?
6. When submitting a decision to the database does your authority ensure the completeness of the input and its overall comprehensibility in accordance with paragraph 22 and 23 of the Guidance of October 2004?
7. Do you submit the relevant decisions to the database within a reasonable time after decisions are taken?
8. According to your authority what is a reasonable timeframe?
9. Within what timeframe does your authority submit cases into the database?
10. Please indicate if there is any additional requirement/authorisation in your internal procedure that needs to be met before an enforcement decision representing the official view of your authority is submitted to the database in accordance with the October 2004 Guidance., taking into account the nature and complexity of the particular decision?
11. Are there elements of your confidentiality regime that prohibit the inclusion of required information into the database?

Benchmarks

Fully applied

If a positive answer is given to question 1 and 2 and 3 and 4 and 5 and 6 and 7.

Partially applied

If a positive answer is given to question 1 and 2 and 3 and 4 and 5 and 7 and a negative answer to question 6.

¹ In the event that you do not take one of the types of decision at a national level the type of decision will be not applicable.

² Interim decisions are not relevant per principle 1 which is why they are only referred to in principle 2.



Not applied

Inability to give a positive answer to question 1 or 2 or 3 or 4 or 5 or 7.

PRINCIPLE 3

Principle 3	The EU National Enforcers should follow a confidentiality regime consistent with that applicable to CESR Members.
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Key issues

1. EU National enforcers should be subject to a confidentiality regime that is comparable and compatible with the confidentiality regimes securities regulators are subject to under the EU legislation **and** the CESR MoU on exchange of information (CESR/05-335)¹.

Key questions

1. Are you as an EU National Enforcer subject to a confidentiality regime that is comparable and compatible with the confidentiality regimes of the relevant EU Directives? Please provide details.
2. Is information exchanged pursuant to the provisions of this regime? Please provide details.
3. Are your EU National Enforcers subject to a confidentiality regime that is comparable and compatible with the confidentiality regime of the CESR MoU²?
4. Is information exchanged pursuant to the provisions of this regime?

Benchmarks³

Fully applied

If a positive answer is given to questions 1 and 2 and 3 and 4.

Partially applied

Not applicable for this Principle.

Not applied

Inability to give a positive answer to either questions 1 or 2 or 3 or 4.

PRINCIPLE 4

Principle 4	In order to achieve a high level of harmonisation, European
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¹ Note that under Article 6 of the CESR MOU, information exchange may fall both within the scope of the EU directives or outside its scope in which case the CESR MOU provisions apply.

² In accordance with Article 6 MMoU information exchange might fall either under the scope of any of the relevant EU Directives or under the scope of the CESR MMoU.

³ Without prejudice to possible answers to the questions, it is expected that EECs Members who are CESR Members will automatically give a positive answer to questions 1 and 3, except if they have not implemented the confidentiality provisions of the relevant European Directives.



	Enforcers Coordination Sessions (EECS) of the SCE will be organised and will involve all EU National Enforcers of standards on financial information, being CESR Members or not. Such sessions will be aimed at discussing decisions taken at national level, as well as experiences in the application of standards on enforcement.
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Key issues

1. All EU National Enforcers of standards on financial information, whether CESR Members or not, should participate in the European Enforcers Coordination Sessions (EECS).
2. EU National Enforcers should discuss selected enforcement decisions taken at national level with the other EECS members.
3. EU National Enforcers should discuss experiences in the application of standards on enforcement with the other EECS members.

Key questions

1. Does your authority participate in the EECS meetings?
2. How often has your authority participated in the EECS meetings from 2005 to July 2008?
 - a) 0– 3
 - b) 3- 6
 - c) 6 – 9
 - d) 9 – 12
 - e) 12 – 15
 - f) 15 – 18
 - g) 18 – 21
 - h) 21 – 24
 - i) 24+
3. Does your authority discuss selected enforcement decisions taken at national level with EU National Enforcers at the EECS meetings? Please provide information that backs up your response.
4. Does your authority discuss decisions to be taken where practicable at EECS meetings¹? Please provide information that backs up your response.
5. Does your authority identify and discuss experiences in the application at a national level of standards of enforcement at EECS?
6. Does your authority identify and discuss issues that are not covered by financial reporting standards or which may be affected by conflicting interpretations for referral to standard setting or interpretative bodies such as IASB or IFRIC²?

¹ See paragraph 6 1st bullet of the Guidance of October 2004.

² See paragraph 6 2nd bullet of the Guidance of October 2004.



Benchmarks

Fully applied

If a positive answer is given to questions 1 and 3 and 5 and 6, and participation at EECS is at 90%.

Partially applied

If a positive answer is given to question 1 and 3 and 5, and participation at EECS is at 60%.

Not applied

Inability to give a positive answer to either questions 1 or 3 or 5, and participation at EECS is at less than 60%.



Annex 2: The basis of the assessment of principle 3 which deals with the confidentiality regime

1. *“The EU National Enforcers should follow a confidentiality regime consistent with that applicable to CESR Members.”¹ “Dissemination of information among EU National Enforcers may imply exchange of confidential information. Therefore, EU National Enforcers should be subject to a confidentiality regime that is *comparable* and *compatible* with the confidentiality regimes *securities regulators* are subject to *under the EU legislation* and *the CESR Memorandum of Understanding on exchange of information.*”²*
2. On the one hand Standard No 2 refers to those already existing confidentiality rules which shall be complied with when applying the Standard without giving the detailed requirements of confidentiality in the Standard itself. On the other hand one of the rationales behind this provision was to make clear that all EU National Enforcers – also those who are not CESR Members – should apply not only the relevant EU legislation on confidentiality requirements but also the CESR Multilateral Memorandum of Understanding on the Exchange of Information and Surveillance of Securities Activities (MoU).³
3. Paragraph 1 of Article 6 of the MoU refers to information exchange under European Directives in which case the (confidential) requirements of the relevant Directives should be observed. However as stated in Paragraph 2, in case information is not exchanged pursuant to the provisions of any of the relevant European Directives, then the information exchanged could only be used for the purposes set by Paragraph 2. Paragraph 3 deals with the confidential treatment of requests for assistance, the information received as well as the matter arising in the course of its operation. Paragraph 4 deals with the possibility to use or disclose information for

¹ Principle 3 of Standard No2.

² See the explanatory text following Principle 3.

³ CESR 05-335.

any purpose other than those defined in Article 6 with the prior consent of the Authority providing the information. Paragraph 5 covers cases where there is a collision between Paragraphs 2 and 3 of Article 3 and disclosure requirements of European Directives.

4. The most important question in this regard is: what are the pieces of EU legislation, which contain a confidentiality regime relevant for Standard No 2? In the first place it is Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (“TD”), which covers the disclosure of periodic and ongoing information about issuers whose securities are already admitted to trading on a regulated market situated within a Member State. It should also be considered whether any other directives could be relevant for the purposes of Standard No 2 . In case of prospectuses Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading (“PD”) and in case of misleading information Directive 2003/6/EC on insider dealing and market manipulation (“MAD”) might also be relevant and in a way could be linked to Standard No 2. For this reason it might be important to compare the confidentiality regimes of these Directives.
5. By examining Article 25 of TD together with Article 22 of PD and Article 13 of MAD, it might be concluded that these Directives contain very similar confidentiality provisions, which mainly request that all employees of the competent authorities (and to whom the competent authority has delegated powers) should be bound by professional secrecy rules and that information covered by professional secrecy should not be disclosed to any other person or authority except by virtue of the laws (regulations or administrative provisions) of a Member State. This indicates that the part of the exercise on Standard No 2 dealing with Principle 3 should concentrate on the main elements of these confidentiality provisions.



6. Finally Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data should also be mentioned here, especially that Indent (39) of TD also refers to it. As the TD has been formed in line with the Data Protection Directive, it might be unnecessary to make a detailed examination of general EU-level data protection provisions at this stage.

7. On the basis of the above it could be concluded that Principle 3 of Standard No 2 requires Member States to have in force an adequate confidentiality regime comparable and compatible with the confidentiality provisions of the relevant Directives. Further to that Principle 3 also requires all non-CESR Member EU National Enforcers to have a confidentiality regime comparable and compatible with the one applied in the MoU. For this reason the Sub-group will assess whether such confidentiality regimes are in place in all Member States for the purposes of Standard No 2.
