



# The Committee of European Securities Regulators



2005 Annual Report



**Annual Report of**  
**The Committee of European Securities Regulators (CESR)**  
to The European Commission  
and to  
The European Parliament  
The ECOFIN Council  
**2005**

## ***CESR'S MEMBERS***



PLEASE NOTE THAT CESR HAS A NEW WEBSITE ADDRESS  
[www.cesr.eu](http://www.cesr.eu)

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*The tone for 2006 is best summed up as "let's make the single market for securities work in practice"!*

*The legal framework to create a Single Market for financial services is now almost in place. Market participants are beginning to benefit from greater legal certainty to invest, provide services or offer financial instruments across*

*Europe. To what extent investors, issuers, intermediaries and those providing the market infrastructure will use this new framework remains to be seen. Since the legislators have delivered the framework and the regulators have done their work towards convergent implementation, it is now the time for market players to decide how to integrate this into their business strategy. The recovery in all segments of the market in 2005 should fuel the process.*

*The task for Europe's supervisors will be to keep in step with these developments, so as to ensure that investors are properly protected and markets function in a smooth and transparent manner. For this reason, 2006 looks set to witness CESR's metamorphosis from being primarily a regulatory advisory body to being a body which is well on its way to becoming an operational network of supervisors. To prepare for this change, CESR has pursued two strategies. The first one was to alert the European Union (EU) institutions on the supervisory consequences of the Financial Services Action Plan (FSAP) through its Himalaya Report, which contributed to the shaping of the financial strategy for the next few years. We are particularly glad that supervisory convergence is now high on the agenda of the EU institutions. We welcome, in particular, the recommendations of the Financial Services Committee (FSC), discussed and endorsed by the ECOFIN in spring 2006. This political backing of 'Level 3' tools to develop supervisory convergence is the necessary complement to the Stockholm resolution that created CESR in 2001.*

*The second strategy adopted, was to reconsider, with a fresh eye, the priorities of CESR's work agenda and to review our working methods. As a consequence, CESR will now concentrate its resources on operational issues intended to promote supervisory convergence. When choosing its priorities, CESR will consider three criteria: whether the issue represents a significant market or regulatory failure; establishing whether the issue has an EU-wide impact and whether, as a result, CESR Members can together influence or create change, by working through the issues together. More extensive use of economic analysis and evidence based methodologies will*

*assist this process. Finally, CESR will develop a number of tools to favour common supervisory approaches and even the development of a common culture amongst supervisors. This future activity will also cover the development of conflict handling mechanisms between members (peer pressure and mediation).*

*The operational activity of CESR in 2006 will include in particular: facilitating convergent enforcement of IFRS for all listed companies in Europe during this first year of application; delivering rapid answers to the smooth functioning of the Prospectus Directive; the development of common monitoring and IT data sharing arrangements; the practical implementation of MiFID at 'Level 3'; and, already, the first steps to evaluating common implementation with a review of the functioning of the Market Abuse Directive.*

*From an institutional viewpoint, in 2005, the accountability links with the EU institutions (European Commission, the European Parliament and ECOFIN Council and Committees) have gained in clarity and stability. This is paramount to a confident implementation of the FSAP and the functioning of the Lamfalussy process. In addition, CESR signed a protocol with the Committee of European Banking Supervisors (CEBS) and the Committee of European Insurance and Occupational Supervisors (CEIOPS) to enhance cross-sector work, and in order to produce tangible results a common work programme was adopted by the three 'Level 3' Committees. We are confident that this will greatly assist us in avoiding the imposition of redundant or conflicting rules.*

*Before concluding, I would like to take this opportunity to thank Professor Fernando Teixeira dos Santos, Pall Gunnar Palasson, Andres Trink and Liam O'Reilly for their outstanding contribution to CESR's work and to wish them the very best in their next endeavours. We also welcome our new colleagues, Carlo Tavares, Jonas Fr. Jonsson, Raul Malmstein and Patrick Neary, whose commitment and willingness to participate in our work from the moment they have joined us has been greatly appreciated. I would also like to take this opportunity to thank the Members of CESR for electing me as their Chair for a third mandate. Finally, I would also like to pay tribute to the efficient work of the secretariat that makes all these achievements possible. On behalf of my colleagues at the Committee of European Securities Regulators, and with the active support of the Vice-Chair, Kaarlo Jännäri, we look forward to taking up the challenges of 2006 and reporting our results.*

Arthur Docters VAN LEEUWEN

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# The Market Participants Consultative Panel

*The Market Participants Consultative Panel (MPCP) was established by CESR in June 2002.*

## The role of the Panel is to:

- Assist CESR in the definition of priorities and work programme;
- Provide comments on the way in which CESR is exercising its role and, in particular, implementing its Public Statement of Consultation Practices;
- Alert CESR on regulatory inconsistencies in the Single Market, identify and suggest areas where CESR should undertake further work to improve supervisory co-ordination (e.g. launch a Level 3 initiative such as providing guidance on the development of a common supervisory standard);
- Inform CESR on major developments in financial markets and to identify new elements for preliminary discussion by CESR.

The Chairman and the Vice-Chairman of CESR, the Chairmen of the Expert Groups and CESR's Secretary General meet with the Panel regularly to maintain a dialogue with market participants and update the Panel on CESR's work. Members of the Panel have also contributed to highlight recent market trends and overall conditions of European financial markets. Notes of the meetings are published on CESR's website a few days after the meeting.

The Panel met three times during 2005, in March, June, and November. Meetings of the Panel are organised along the following lines: one technical session devoted to discussing issues of high interest in the regulation of financial securities markets, on which CESR will form its views either in delivering technical advice to the European Commission or in adopting regulatory standards at 'Level 3' of the Lamfalussy procedure; and another session devoted to discussing aspects related to the Lamfalussy procedure, the consultation policy of CESR, as well as its priorities and working methods.

In the course of 2005, the members of the Panel introduced and discussed the following technical issues<sup>1</sup>:

- Analysis of major trends and evolutions in financial markets;
- EU/US regulatory and supervisory issues;
- Corporate rights in investment management;
- Post-FSAP;
- The supervisory convergence role of CESR;
- Mediation mechanism;
- Storage of financial information;
- CESR's work plan for 2006.

## Analysis of major trends and evolutions in financial markets

The discussion was divided into wholesale, retail markets and the process of consolidation of trading and post-trading infrastructures. Members of the Panel

voiced concerns about bond markets not being as accessible for small and medium sized enterprises. The members considered hedge funds and private equity important developments to be followed more closely in the near future. The MPCP advocated more transparency of all activities of portfolio managers as investors and stressed the importance of investor education as an important tool.

A need to evaluate the general competitiveness of EU markets, in all sectors, was also stressed by the Panel.

## EU/US regulatory and supervisory issues

Members of the Panel were updated on the recent initiatives of cooperation between CESR and the Commodity Futures Trading Commission (CFTC) on financial and commodities derivatives markets.

It was suggested that CESR should adopt a stricter position, particularly after the recent developments in the banking and accounting fields. Mutual recognition should be the objective for bilateral discussions.

The members of the Panel considered the problems of listing of EU companies on US exchanges and the exercise of corporate rights in investment management. The discussion regarding listing on US exchanges focused on three aspects: the problem of delisting and deregistration, the impact of the Sarbanes Oxley Act and the EU and US accounting regimes.

The discussion on all these three aspects concluded that CESR Members should adopt the same approach i.e. to enhance the equivalence of management and accounting systems based on agreed principles in order to facilitate equivalence or mutual recognition, rather than to promote their convergence.

## Corporate rights in investment management

During the discussion on investment management, the members focused on the issues arising from the activity of investment funds with particular regard in the use of corporate rights. In relation to the principle contained in the UCITS Directive according to which UCITS should be prevented from exercising significant influence on the management of companies, the group considered it remains valid.

## Post FSAP

Based on the Green Paper adopted by the European Commission, members of the Panel discussed the priorities after the FSAP. Whilst of the view that the document does not contain a clear message, they noted that it reflects the main conclusions of the works of the four Forum Groups established by the Commission. One member of the Panel considered it disappointing

<sup>1</sup> - The presentations made by the members of the Panel are published with the summary of the meeting on the CESR website

# The Market Participants Consultative Panel

that the Green paper does not mention the reform of the structure of financial supervision, and asked CESR to react since this might give the false impression that it is not an issue.

The Chairman of CESR reported on the debate and the discussions following the 'Himalaya Report'. In particular, the Chairman stressed the importance of three issues: first, it is essential that all regulators share equivalent powers for the proper functioning of home/host relationships and to ensure good cooperation on cross-border inquiries and investigation; there is still strong support for the development of Level 3; concerning the adoption of pan-European decisions, some support has been expressed for IFRS, whilst delegation of powers and tasks has been accepted. He also mentioned that regulators are developing tools to enhance the cooperation needed to conduct market abuse investigations, particularly where financial instruments were traded in more than one market and that crisis management tests are planned in cooperation with CEBS and CEIOPS.

Members of the Panel invited CESR to evaluate in detail the experiences of the integration of some markets (Euronext and OMX) in order to further explore means by which we can create enhanced coordination between regulators. They also invited CESR to conduct a pilot exercise on conflicts of interest to address consistency across the different financial sectors.

## The supervisory convergence role of CESR

The Panel discussed the development of Level 3 supervisory convergence, as Level 3 will have a predominant role in future CESR activities. Also discussed were possible ways to improve the functioning of the Review Panel.

Members of the Panel concurred with the view that the Review panel should address, not only transposition and implementation by individual countries, but also make cross-country evaluations. They also suggested that the Review Panel should be more 'issues oriented' and not limit its activity to assessment of 'Level 3' standards but also of 'Levels 1 and 2' to detect any major deficiencies. It was requested that 'Level 3' starts in parallel with 'Level 2' to facilitate convergence in the implementation of the new rules. They also asked CESR to enhance the level of awareness of market participants on the activity of the Review Panel.

It was also recalled that equal competences and powers attributed to competent authorities across Europe is a precondition for making the Lamfalussy procedure work. Periodic evaluations of powers given to competent authorities should be conducted to monitor progress made by Member States.

On cross-sector activities, CESR is currently working with CEBS and CEIOPS to achieve a higher degree of consistency in the field of outsourcing and on reporting obligations.

## Mediation mechanism

Members of the Panel strongly supported the initiative for the establishment of a mediation mechanism and recommended CESR finalise its proposal. However, they highlighted two intrinsic limits of the mechanism: the fact that mediation is restricted to peers and that it is not binding. On the latter, members of the Panel considered that some incentives or disincentives (such as publicity of the decisions) should be introduced to respect the decision of the mediation mechanism and, if needed, CESR may raise the issue with the Commission for eventual changes to the Level 2 rules. Furthermore, it was suggested that decisions of the mediation should be envisaged even if a CESR Member declines to participate.

Members of the Panel supported the involvement of market participants, in particular the possibility to trigger the mediation mechanism through the home supervisor or even the direct presentation of cases before the mediation panel. Regarding the scope of the issues to be considered by the mediation panel, it was suggested that it should not only cover cooperation cases, but also those of supervision. On the proposal to introduce gatekeepers, some considered it to be positive, as it provides an opportunity for early evaluation of a case, while others opposed the intervention of third parties in the decisions of peers. Finally on the composition of the mediation panel, it was suggested that this should be established on a case by case basis to take advantage of the specific knowledge necessary to make decisions.

## Storage of financial information

Members of the Panel had a policy discussion on future IT projects in the field of financial information and transaction reporting. These projects complement the establishment by CESR of a database on decisions concerning the enforcement of accounting standards, which is already operational.



Members of the Panel advised CESR not to launch huge systems without an in-depth assessment of all factors: security, confidentiality and connectivity being some of them. Any future systems should be designed to address the real needs and be easily adapted to subsequent changes and should leverage from existing systems. Duplication of what already exists at national level should in principle be avoided. Aspects of governance are particularly relevant, such as control, costs allocation and funding, running costs and necessary support. Members of the panel also claimed for maximum harmonisation of reporting formats under MiFID.

Regarding possible systems for storage of financial information some members of the Panel considered that standardisation and centralisation in a central database would bring benefits to European investors, whilst others questioned these benefits in terms of real needs and costs involved. The latter also considered that publication of information on the issuers' and exchanges' web sites should be sufficient. Others considered that a system that links already existing systems would not represent

additional costs on issuers. One member also noted that information should be accessible free of charge.

### Work plan for 2006

Members of the Panel recalled that the focus of future CESR activity should be on the implementation and operational tasks rather than on rulemaking. Costs and burden on market participants should be carefully considered. It was also suggested addressing delegation of supervisory powers and/or tasks from one authority to another. CESR should also be more transparent about its policy for adopting future Level 3 initiatives and the reasons for them. Guidelines for practical implementation of Level 2 measures should be given even before they are finally adopted. Market trends and developments should be carefully monitored on an on-going basis.

Members of the Panel raised questions on future Level 3 activities under MiFID and cross-sector activities. It was clarified that CESR will not start addressing Level 3, before Level 2 measures have reached a certain stability.

#### The members of the CESR's Market Participants Consultative Panel are:

*Mr John Howard, Chairman, Financial Services Consumer Panel*

*Dott Salvatore Bragantini, Vice-President, IW Bank*

*Dr Rolf E Breuer, Chairman of the Supervisory Board, Deutsche Bank AG*

*Mr Donald Brydon, Chair of the Financial Services Practitioner Panel and Chairman of AXA Investment Managers*

*Mr Ignace Combes, Vice-President, Management Committee of the Board of Directors, Euroclear Bank*

*Mr Peter Paul F. de Vries, Director, Association of Shareholders, Vice-President, Euroshareholders*

*Dr Lars-Erik Forsgardh, Chairman of World Federation of Investors and CEO, Swedish Shareholders Association*

*Mr Dominique Hoenn, Deputy General Manager of BNP Paribas, Vice-Chair of the Supervisory Board of Euronext*

*Ms Sonja Lohse, Group Compliance Officer, Nordea AB*

*Mr Julio Lage Gonzalez, International, Institutional relations, innovation and strategy areas, CAIXA*

*Mr Jonas Romlin, Head of Derivatives, SEB Asset Management*

*Dr Rüdiger von Rosen, Managing Director, Deutsches Aktieninstitut*

*Dr Zoltan Speder, Vice-President and CEO, OTP Bank RT*

*Mr Theodoros Philippou, General Manager, Institute of Certified Accountants in Cyprus*

*Mr Wieslaw Rozlucki, Chair and CEO of the Warsaw Stock Exchange*

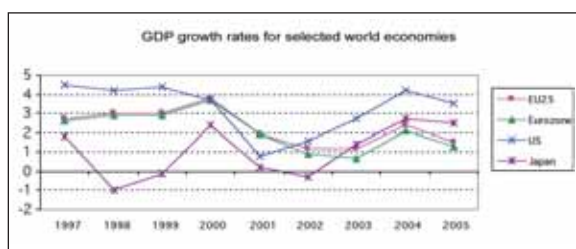
#### Renewal of the Panel

Three new members of the Market Participant Consultative Panel (John Howard, Julio Lage Gonzalez and Jonas Romlin) were appointed by CESR at its Plenary meeting in October, and two members (Dominique Hoenn and Donald Brydon) were renewed.

*This chapter gives a brief overview of major economic trends in 2005, which can be interpreted as having had a significant impact on the performance of European securities markets. The major trends that affected the international economy in 2005, were the increase of the oil prices mainly due to uncertainties about product supply, heightened geopolitical uncertainties and natural disasters that occurred during the year. Added to this, the widening interest rates differentials between the United States (US) and the European and Japanese economies and the persistence of high growth rates of the US and the Asian (mainly the Chinese) economies also took its toll.*

### Output Growth

The Euro area economic growth decelerated to 1.3% in 2005 from 2.1% in 2004, as the oil price surge held back private consumption. From a global perspective the Euro area continued to be the weakest performer among the major economic blocks during 2005.



Source: Eurostat

Growth has been stronger than expected in the United States, driven by a strong demand; in China, where activity remains buoyant despite tightening economic measures, and in most emerging markets and developing countries. In contrast, growth in Japan was moderate reflecting low exports and weak domestic demand. Recent data generally suggest world activity is picking up and strong corporate profits and solid consumer and business confidence should support a renewed expansion during 2006.

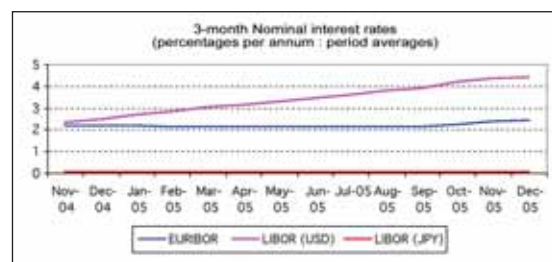
### Exchange rates

The euro depreciated by 10.4% against the US dollar, since the beginning of 2005, reaching \$1.21 at the end of January 2006.



Source: ECB Statistics December 2005

The widening interest rate differentials, in favour of the United States relative to the EU economy and the additional support for the US dollar which came from the rise in portfolio investment inflows into the United States, were the main factors of the appreciation of the US dollar over the Euro. The signs of an improving business climate in the EU area have positively affected the European currency but this effect was offset by the appreciation of the US dollar.



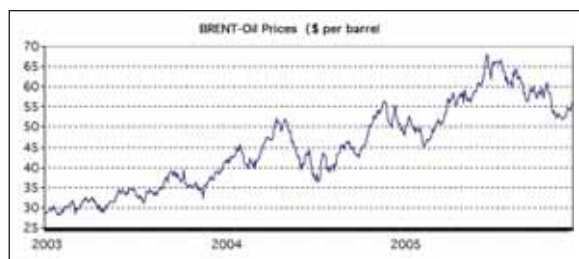
Source: ECB Statistics December 2005

During the same period, the euro appreciated by 2.6 % against the Japanese Yen, in spite of several positive signals for the Japanese economic outlook. This was due largely to the impact of high oil prices on the Japanese current account surplus and the widening yield differential between US and Japan.

### Oil prices

Oil prices have remained high and volatile. During July 2005 they began rising sharply reaching a record nominal high of \$68.06 per barrel on 15 August 2005. On 9 December 2005, the price of Brent crude oil stood at \$52.63, 16% below its mid-August peak but still 38.6% higher than at the start of the year.

Throughout the year this increase was driven by continued strong demand, uncertainties about the Organization of the Petroleum Exporting Countries (OPEC) production plans, falling non-OPEC supply, heightened geopolitical uncertainties and natural disasters such as hurricanes which damaged essential oil infrastructure in the Gulf of Mexico.



Source: [www.naftemporiki.gr](http://www.naftemporiki.gr)

According to an International Monetary Fund (IMF) estimation, in the past, a permanent \$5 a barrel increase in oil prices has been expected to lower global growth by up to 0.3 percentage points; in practice, the majority of the mature financial markets have been proven to be resilient, partly because higher prices have in part been a consequence of strong economic growth mainly from Asian countries and the United States, and partly reflecting the greater credibility of monetary policies.

The key factor behind the robust growth in oil demand is the ongoing expansion of the global economy, with Asia, especially China, and North America leading the way.

Demand by region	2005	2004	%change p.a.
North America	25,52	25,18	1,34%
Europe	16,32	16,47	-0,91%
OECD Pacific	8,64	8,62	0,23%
China	6,65	6,38	4,14%
Other Asia	8,72	8,55	1,97%
Middle East	5,89	5,88	0,17%
Africa	2,89	2,81	2,81%
Latin America	4,96	4,91	1,01%

Source: *International Energy Agency Oil market report 2005*

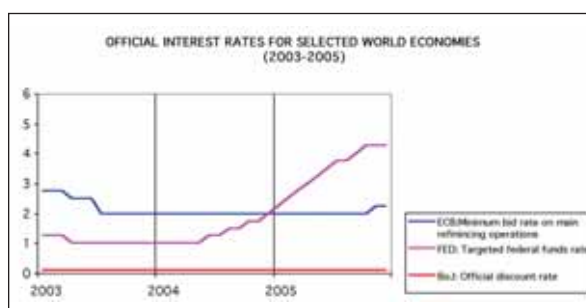
Persistently high oil prices affect market economies through their impact on external balances, inflation, monetary and exchange rate policies and fiscal balances. Remarkably, the external and fiscal balances of the EU economies have proven to be broadly resilient to higher oil prices, and the pass through to domestic inflation remained limited during 2005.

As it was stated in the European Central Bank's (ECB) December introductory statement, price shocks in the Euro area, such as current high oil prices, pass through to prices of other goods and services, with a substantial time lag. This lag is due to the inflexibilities of the Euro area labour and product markets, which lead the requisite adjustment to occur only through movements to prices.

## Inflation and Interest rates

Since January 2005, the patterns of the Harmonized Index of Consumer Prices (HICP) inflation have diverged. While overall inflation stabilized at around 2% in the period up to July 2005 it rose to 2.6% in September as a consequence of the escalating oil prices to \$68.06 per barrel in August 2005.

For inflation and inflationary pressures across the EU to remain relatively subdued, the European Central Bank raised its benchmark rate for the first time in five years by a quarter percentage point to 2.25% on the 1 December 2005.



Source: *ECB Statistics Pocket Book December 2005*

The statement that accompanied the rate increase suggested that the ECB is not engaging in a series of increases in interest rates, but it is merely adjusting its accommodative monetary policy stance to take into account the risks to price stability.

## Equity Markets

Money and credit growth developments have accelerated during 2005; the excess liquidity coupled by the negative real market interest rates and the strong corporate earnings growth worldwide have triggered rallies in the stock markets with the DJ Eurostoxx increasing by 21% since the beginning of the year, the S&P 500 index increasing by 11% and the Nikkei 225 index by 34% during the same time period. Among the major markets, the Japanese market showed the strongest performance as positive prospects for economic growth led to a large inflow of foreign capital which boosted the Japanese equity market.



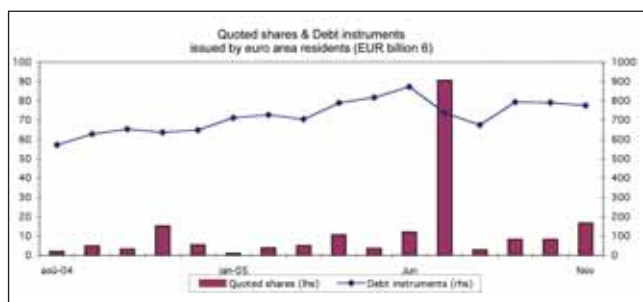
Source: Yahoo Finance & CESR

The outstanding performance of the Japanese stock market was accompanied by high and escalating price volatility in comparison to the European and the US markets, where volatility remained low or slightly declined.



Source: CESR's estimates

The number of initial public offerings (IPO's) went up slightly in 2005, but de-listings as a consequence of restructuring of international companies also continued.



Source: ECB Monthly Bulletin December 2005

According to the European Commission, the surge in financial instruments' issuance by financial institutions and by non-financial corporations in June 2005 seemed to be mainly related to the implementation deadline of 1 July 2005 for the EU Directive on

Prospectuses, which required most companies to update their borrowing programmes before returning to the market.

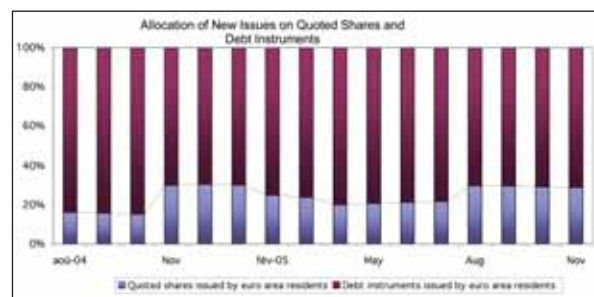
2005 was by far the best year for corporate mergers and acquisitions (M&A) since 2000. The United States and Europe each recorded 900 billion euros in announced mergers during the year. That is a 49% rise for Europe compared with last year's M&A activity and a 30% increase for the United States.

Worldwide there were 11% more deals than in 2004. Figures include Procter & Gamble's 51 billion purchase of Gillette, Mitsubishi Tokyo Financial Group's 50 billion purchase of UFJ Holdings and Gas Natural's 43.6 billion bid for Endesa in Europe.

## Bond Markets

During 2005, the long term government bond yields declined slightly in the US and Japan and more substantially, about one percentage point, in Europe, where they reached historical lows in September. Along with the ongoing monetary tightening, yield curves have become flatter in the US and the EU.

Looking at supply factors on debt and equity markets, issuance on bonds by euro area residents remained strong.



Source: ECB Monthly Bulletin December 2005

The performance of corporate bonds during the year was characterized by further narrowing spreads, particularly in the high yield sector, which may indicate higher liquidity in this market. The role of hedge funds in the area of fixed income securities trading has grown stronger, in some instance accounting for more than 50% of trading in these markets.

In meeting increased demand from institutional investors, mainly pension funds and insurers, governments have further raised their issuance of ultra-long bonds. Already, in 2004 the US Treasury has issued 20-year inflation protected securities (TIPs) and has recently allowed plans to reintroduce a 30-year bond at the beginning of 2006.



In February 2005, the French Treasury issued a 50-year bond; in May the UK government re-introduced a 50-year gilt; in September, the UK Treasury issued the world's first inflation linked bond and during the year the Italian government offered additional amounts of 30-year index linked bonds first introduced in 2004.

### Derivatives Market

Elsewhere, the credit derivatives market grew strongly this year as banks, hedge funds and others have substantially increased their use of complex financial instruments. According to the International Swaps and Derivatives Association (ISDA) mid-year 2005 market

survey, in June, the notional amount of credit default swaps (CDS) reached \$12.43 trillion, 128% rise compared with a year earlier. The notional amount outstanding of equity swaps, forwards, and OTC options reached \$4.83 trillion, 28% increase compared with a year earlier. Finally, the annual growth rate for interest rate derivatives to mid-2005 was 22% compared with a year earlier.

The high growth of the credit derivatives market segment highlights the changes under way in the global financial system as banks and investors use complex financial instruments to manage risks.

# Regulatory harmonisation (Level 2)

## MiFID

### 5.1

## 5.1 MiFID

The Directive on Markets in Financial Instruments (Directive 2004/39/EC – “MiFID”) forms one of the cornerstones of the EU's securities regulatory regime, and is intended to deliver an effective “single passport” allowing investment firms and regulated markets to operate across Europe, under a common set of rules which enhances the protection of European investors.

MiFID was adopted by the European Parliament and Council on 21 April 2004. The Directive will replace the Investment Services Directive 93/22/EEC.

### Mandate

#### Mandate and structure of CESR's Expert Groups for MiFID

In order to be able to deliver CESR's technical advice to the Commission in an appropriate and timely way, CESR decided to establish three Expert Groups:

- **Expert Group on Intermediaries:** This Expert Group was chaired by Callum McCarthy (Chairman of the Financial Services Authority [FSA]); rapporteur of the group was Carlo Comporti. This Expert Group covered the mandates related to: organisational requirements; conflicts of interest; conduct of business obligations when providing investment services to clients; best execution; order handling rules; eligible counterparties; definition of investment advice and definition of commodity derivatives.
- **Expert Group on Cooperation and Enforcement:** This Expert Group was chaired by Michel Prada (President of the Autorité des Marchés Financiers [AMF]); rapporteur of the group was Alexander Karpf. This Expert Group covered the mandates related to transaction reporting between competent authorities and exchange of information. A Technical Task Force of the Expert Group undertook work as to technical issues related to the exchange of transaction reports.
- **Expert Group on Markets:** This Expert Group was chaired by Karl-Burkhard Caspari (Vice-President of the Bundesanstalt für Finanzdienstleistungs-aufsicht [BaFin]); rapporteur of the group was Jari Virta. This Expert Group covered the mandates relating to admission of financial instruments to trading; post-trade transparency disclosure by investment firms; pre-trade transparency requirements for MTFs; post-trade transparency requirements for MTFs; pre-trade transparency requirements for regulated markets and post-trade transparency requirements.

A Steering Group was established to consider horizontal issues and to ensure overall consistency in the advice prepared by the three Expert Groups. This Group was composed of the three chairmen of the Expert Groups and chaired by CESR's Chairman, Arthur Docters Van Leeuwen.

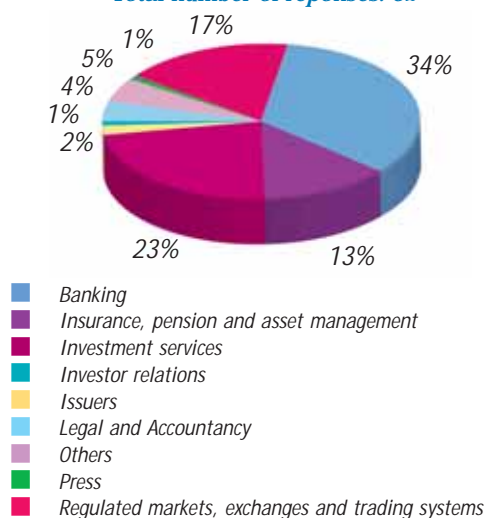
In accordance with the Lamfalussy Process, the European Commission asked CESR (by the formal mandates of 20 January 2004 and of 25 June 2004) to deliver its technical advice on possible implementing measures, so called ‘Level 2 measures’, of the MiFID.

Following its first technical advice submitted to the Commission on 31 January 2005 (Ref. CESR/05-024c), along with a feedback statement (Ref. CESR/05-025), CESR submitted its final set of advice on possible implementing measures under the MiFID on 30 April 2005 (Ref. CESR/05-290b) and the corresponding feedback statement (Ref. CESR/05-291b). The advice covers issues on which advice was requested in the formal mandate from the Commission of 25 June 2004.

**CESR's draft technical advice on possible implementing measures of the Directive 2004/39/EC on MiFID**  
Total number of responses: 31



Second consultation paper on CESR's  
draft technical advice on possible  
implementing measures of the Directive  
2004/39/EC on MiFID  
Total number of responses: 82



Before finalising its advice to the European Commission, CESR consulted extensively on the mandates received, on some initial concept papers, on its first proposals and on the revised proposals. CESR also held four public hearings with market participants.

CESR's advice covered the following possible implementing measures of MiFID:

**Independence of compliance:** This included principles related to the compliance function, compliance policies and procedures of investment firms, and personal transactions. Whilst CESR recognised that the principle of independence of compliance was key, CESR was considering how to implement this in a flexible manner to take into account smaller investment firms to ensure that these types of firms can effectively comply;

**Obligations related to internal systems, resources and procedures:** CESR's advice provided a set of criteria for assessing the adequacy of the internal systems, resources and procedures of an investment firm in the light of a range of factors, including the nature, scale and complexity of its business;

**Obligations to avoid undue additional operational risk in case of outsourcing:** CESR proposed principles to be applied by investment firms when outsourcing material operational functions and/or investment services and activities;

**Record keeping obligations:** CESR's advice established conditions with which an investment firm's arrangements have to comply, the types of records that are covered, and the period of time for keeping the records;

**Safeguarding of clients assets:** The advice identified the organisational, procedural and contractual requirements that have to be put in place by investment firms to safeguard clients' ownership rights, especially in the event of their insolvency or actions brought against them by their creditors or by creditors of one or more of their clients;

**Conflicts of interest:** In its advice, CESR was addressing the proper way to manage conflicts of interest; arising both internally within an organisation and from the angle of disclosure to investors;

**Fair, clear and not misleading information:** Here, CESR specified, in particular, the criteria for assessing the fairness, clearness and not misleading character of marketing and other promotional/publicity communication;

**Information to clients:** The advice specified the content of the appropriate minimum information that the investment firm should supply to its clients and potential clients under Article 19 (3) of the Directive ("Conduct of business obligations when providing investment services to clients - Information to clients"), and also addresses the timing and form of the provision of that information;

**Retail client agreement:** CESR's advice dealt with the minimum content and form of retail client agreements;

**Reporting to clients:** CESR specified the minimum requirements investment firms must comply with when providing adequate reports on the services provided to their clients;

**Investment research:** The advice addressed the management of conflicts of interest arising from the provision of investment research, providing a number of minimum organisational measures to be considered by investment firms when setting out their conflicts policy. These particular provisions, which are based on IOSCO's standards on analysts, were developed to interact effectively with the provisions of both the Level 1 and Level 2 Market Abuse Directives. In addition, they were developed to ensure they compliment the fair presentation of investment recommendations and the disclosure of conflicts of interest, and the proposals for the management of conflicts included in the first set of CESR's advice under MiFID;

# Regulatory harmonisation (Level 2)

## MiFID

## 5.1

**Best execution:** The best execution regime is an important component of the package of investor protection and market integrity measures in the MiFID. CESR provided advice on the three key requirements in relation to this obligation: (a) the criteria to determine the relative importance of factors that investment firms must take into account to obtain the best possible result for their clients; (b) the criteria for establishing and implementing effective arrangements to comply with the above requirement, including the creation of an order execution policy and monitoring the effectiveness of its order execution arrangements and policy; and (c) the content and procedure of appropriate information regarding the policy towards clients and how to obtain their consent to it. CESR also clarified the application of best execution obligations by investment firms that provide the service of portfolio management or order reception and transmission services;

**Suitability test:** CESR provided criteria for assessing the minimum level of information from the client ('Know your customer' rules) and for assessing the suitability of the envisaged transactions;

**Execution only:** CESR provided advice on the definition of 'non-complex' financial instruments to ensure that consumers receive the appropriate levels of protection whilst ensuring that professional investors can also operate within an appropriate regime which takes due account of their level of expertise;

**Eligible counterparties:** CESR advised the European Commission on the criteria that would allow certain undertakings to be considered as 'eligible counterparties' (as identified by the MiFID). CESR also advised the Commission on the introduction of some transitional measures to ensure the smooth application of this regime across Europe. In addition, the advice set out a procedure that would enable eligible counterparties, under certain circumstances, to request a more protective treatment for certain types of transactions;

**Exchange of information:** The purpose of this part of the technical advice was to establish a general framework for cooperation between the competent authorities, in order to facilitate the fulfilling of their duties under the Directive;

**Obligation to cooperate:** CESR proposed criteria under which the operations of a regulated market in a host member state could be considered as of substantial importance for the functioning of the securities markets and the protection of investors in the host Member State;

**Transaction reporting:** CESRs' advice provided criteria, in particular, as to the methods and arrange-

ments for reporting financial transactions to competent authorities, the criteria for assessing liquidity in order to define a relevant market in terms of liquidity of financial instruments, as well as the minimum content of transaction reports;

**Market Transparency:** CESR provided advice on the pre-trade information for regulated markets, multi-lateral trading facilities (MTFs) and systematic internalisers as well as the so-called limit orders display for investment firms. In particular in relation to:

### Pre-trade transparency:

- For regulated markets and multi-lateral trading facilities the basic (minimum) level of information for different trading methodologies was specified as the 'five best price levels' (to the extent permitted by the trading method in question). The information should be available for all market participants and the public alike on a reasonable non-discriminatory commercial basis;
- CESR's advice specified several exemptions relating to the type and size of orders and to trading methodologies, such as block trades and negotiated trades, where the trades are not subject to mandatory pre-trade transparency;
- In addition to trading on regulated markets and MTFs, the MiFID regulates in particular, the operation of systematic internalisers. CESR's advice therefore complemented several provisions of the 'Level 1' Directive in this respect. This relates firstly to the definitions of systematic internalisers. In particular, CESR proposed several criteria which relate to the organisation of the activity within a firm. Secondly, indicative criteria were proposed to determine when the activity is carried out on a frequent basis. The criteria proposed include, using either the portion of internalised orders of the whole order flow or 'the market share' of the firm's internalisation activity. Furthermore, as the MiFID links the obligations for systematic internalisers to the existence of shares with a liquid market, CESR's proposal included a set of criteria to identify which shares would fall into this category. In this respect, CESR tried to address the liquidity from a point of view where it is possible for an internaliser to 'wind up' its risk positions. CESR's proposal tried to find a reasonable balance by using a combination of measures including the free float, average number of daily trades and average daily turnover. CESR recognised that this proposed approach may in practice mean that in certain Member States or markets, no shares would be subject to internalisation provisions. CESR was of the opinion that the proposed approach best reflects the purpose



of Article 27 (Obligation for investment firms to make public firm quotes). Additionally, the advice covered different provisions regarding systematic internalisation, for example, classification of the shares into different classes and standard market sizes as well as obligations for systematic internalisers for example to publish quotes and managing client orders;

**Post-trade transparency:** CESR specified the content of information to be disclosed for each trade as close to real time as possible after the execution. As in the case of pre-trade transparency, CESR also specified a necessary exemption for large scale transactions compared to transactions of a normal market size which in the case of post-trade transparency mean delayed publication of the information. While the exact content of delayed publication mechanisms should be determined by the relevant markets, CESR proposed the minimum thresholds for different classes of shares, based on the trading activity of a share;

**Admission to trading:** CESR proposed requirements for different classes of instruments which should be fulfilled in order to qualify for admission. The advice recognised that there are already several other Directives which also regulate the information to be provided by the issuer. CESR's advice therefore concentrated on issues which relate to the tradability of the instruments. In certain cases, where there is no previous community law e.g. in case of derivatives, CESR's advice was more detailed. Additionally, CESR's advice specified the role of regulated markets in verifying compliance by issuers with their disclosure requirements.

## General remarks regarding the Level 2 advice

CESR's advice sought to propose proportionate solutions which take into account the varied nature and size of the market participants involved, and the varied complexity of the products and services offered to their clients. At the same time, the advice sought to provide market participants with the necessary clarity and legal certainty to enable them to innovate with a large degree of confidence whilst ensuring that the advice is proportionate. CESR's advice was formulated on a principles based approach to regulation, which was not meant to introduce a maximum harmonization across Europe. The amount of detail included in each part of the advice was therefore carefully evaluated on a case by case basis, with a particular emphasis on the need to avoid over prescription and excessive detail wherever possible.

### *MiFID Consumer Day*

On 22 March 2005, CESR hosted a Consumer Day, where 12 representatives of national and European consumer associations met with the MiFID Expert Groups.

The discussion on the 'Intermediaries' section was facilitated by Callum McCarthy, the Chairman of CESR's Expert Group on Intermediaries and on the Markets section the discussion was facilitated by Karl-Burkhard Caspari, the Chairman of CESR's Expert Group on Markets.

The importance CESR attaches to receiving comments on its advice from representatives of retail clients and consumers was stressed and CESR expressed its concern that the responses received to previous consultations carried out on MiFID, had not reflected sufficiently the view of this set of stakeholders. CESR made it known that it intended to organise similar meetings in the future to continue and develop a wider dialogue with consumers on CESR's work.

As the discussion focused on MiFID in relation to CESR's advice on markets and intermediaries, a large number of important points were made, and these are reflected fully in the statement (Ref. CESR/05-350) published on 16 May 2005. This statement is available on the website under Expert Groups/MiFID. Consumer representatives raised some general issues which might help to increase responses from consumers' representatives to CESR consultations. They stated that consumer associations do not necessarily have either the financial knowledge or staff to be in a position to prepare fully considered responses. In addition, financial services were not always a high priority for a consumers.

However, on a practical level, the need for translations from English to national languages was mentioned as a factor which represents an obstacle to their active participation. They also stated that CESR's consultation papers are not always reader friendly. In particular, they would welcome having executive summaries and explanations of the proposals and the reasons why they are especially important from the consumers' point of view.

Regarding the translation of documents or other help, it was pointed out that the national CESR Members are most likely to be the natural contact point in this respect.

# Regulatory harmonisation (Level 2)

MiFID

5.1

## MiFID Consumer Day cont'd

Finally, the representatives highlighted the importance of investor education and the importance of ensuring it is high on the political agenda. CESR has since organised a Consumer Day to enhance consultation practices and to establish CESR's role in investor education (see page 37).

In the second semester of 2005, the Commission presented a number of working documents to inform discussion at the European Securities Committee (ESC). CESR attended the meeting as an observer.

## Next steps

*The European Commission tabled in February 2006 its proposal for the implementing measures under MiFID. The proposal is currently being discussed by the ESC; the European Parliament will give its opinion. A final vote by the ESC is expected at the end of June 2006. The Commission will probably adopt the final Level 2 measures by September 2006.*

*In parallel, an agreement on the proposal to extend the transposition of MiFID until November 2007 (nine additional months for Member States to transpose the directive as well as nine additional months for the private sector to make the necessary arrangements to adapt their systems) was reached by the Council and the European Parliament. Publication in the Official Journal is expected.*

*In the wake of final adoption of Level 2 measures, CESR will start conducting preparatory work to identify more in detail the specific issues on future Level 3 activity under MiFID, together with the related priorities and the timing.*

*At this stage, possible areas of Level 3 work can be categorized in three areas.*

- i) The first area includes technical issues of operational importance to achieve consistency for cross-border implementation of the Level 1 and Level 2 texts.*
- ii) The second category of Level 3 work could potentially cover areas on which the Commission has signaled during the ESC negotiations, that further operational work is required or, for which, the Commission and the ESC prefer it to be developed at Level 3. It also includes work that CESR is mandated to conduct under Level 2 measures and/or input to the Commission in the preparation of reports and/or reviews requested by Level 1 and Level 2. The content of such work is subject to the finalisation of the Level 2 measures. It may also cover issues that were not considered by CESR when preparing its technical advice.*
- iii) The third category covers technical aspects with IT implications. It is difficult to foresee at this stage this stream of work; more clarity will be given on the basis of the results of the work conducted by the new IT Task Force.*



## Expert Group on Intermediaries

### Chair's Message

**Callum McCarthy, Chairman of the FSA, UK**

***"The CESR Expert Group on Intermediaries delivered its technical advice to the Commission on a wide range of mandates within a very tight timeframe. The range of differences across Member States and markets (size and nature of intermediaries, the different services and products, and the varied nature of the clients) added to the different market practices that exist, made the elaboration of these minimum standards very complex and challenging. The group's commitment, the transparency of the process and an extensive consultation with interested parties, including consumer representatives, resulted in a constructive and fair compromise for major implementing measures on intermediaries providing investment services. We are confident that the resulting advice enables intermediaries to exploit the advantages of the Single Market and benefit investors, by providing them with a common regulatory framework for their protection which is of a high standard."***

During 2005 the Expert Group on Intermediaries finalised the advice to the Commission on a wide range of important issues. The following are the areas where the advice is expected to bring substantial change:

**Organisational requirements:** CESR's advice intended to introduce key principles for internal organisation of intermediaries that have then to be implemented in the specific circumstances according to the nature, size and range of business of the intermediaries.

**Definition of 'investment advice':** CESR's advice intended the service of investment advice in a broad sense, covering also the so-called 'generic advice', such as financial planning and asset allocation, under the assumption that the client needs to be protected since the initial moment contacts with investment firms are taken and where investment decisions start to be made. However, CESR recognized that appropriate exclusions should be granted to allow entities providing only generic advice not to be submitted to mandatory authorisation.

**Deposit of client funds:** CESR's advice identified the organisational, procedural and contractual requirements that have to be put in place by investment firms to safeguard clients' ownership rights, particularly in the event of their insolvency or actions brought against them by their creditors or by creditors of one or more of their clients. For the purpose of protecting clients' ownership rights, it was of the utmost importance that an investment firm maintains its records in a way that allows the prompt identification of ownership rights and ensures correspondence.

**Conflicts of interest:** CESR's advice avoided trying to provide a detailed list of particular conflicts of interest; the advice provides criteria for the identification of these conflicts and it also includes a non-exhaustive list of measures that investment firms must take into consideration to set up their conflicts policy for properly managing the conflicts. Thus, the

aim is for firms to take all reasonable steps to prevent any potential conflicts adversely affecting the interests of the client. Specific measures have been suggested to address the conflicts to which financial analysts are exposed; these measures are based on the recent findings of IOSCO. Finally, some key principles have been established in the field of inducements.

**Conducts of business rules:** CESR's advice is meant to introduce proportionate requirements for the protection of investors that are applicable on the basis of the different needs. Retail investors will be subject to the full regime, whilst the regime applicable to professional clients will be much lighter and composed of key essential principles.

A new approach to **best execution:** CESR based its advice on four key requirements. An investment firm must:

- take all reasonable steps to obtain the best possible result for its client when executing an order, taking into account a number of specified factors and any other consideration relevant to the execution of the order;
- establish and implement effective arrangements for complying with the above requirement, including the creation of an order execution policy;
- provide appropriate information about the policy to its clients and obtain their consent to it; and
- monitor the effectiveness of its order execution arrangements and policy.

### Next steps

*In 2005, the Expert Group started its cross-sector activity (particularly with CEBS and CEIOPS). In this context, CESR's Secretariat held contacts with CEBS on its advice on some aspects of rules on intermediaries, namely organisational requirements, such as outsourcing, where the advice also impacts on credit institutions performing investment services, and on which banking supervisors are already conducting parallel work. CESR, CEBS and CEIOPS agreed a joint approach to ensure consistency between the work undertaken by CEBS on outsourcing and the draft Level 2 MiFID measures. This work will continue in 2006.*

## Statistics of meetings in 2005

The Expert Group met three times in 2005.



## Expert Group on Markets

### *Chair's message*

**Karl-Burkhard Caspari, Vice-President of the BaFin, Germany**

***"The Expert Group had to deal with some of the most challenging and sensitive issues of the Markets in Financial Instruments Directive and in some places entered entirely new territory while working under the constraints of a demanding timeframe. We believe that the proposals developed by the Markets Group in co-operation with a large number of market participants who got involved by means of consultations and public hearings, represents a workable and practicable result which - no doubt - needs to be carefully reviewed when MiFID applies in practice. Nonetheless, we remain confident that the work of the Markets Group struck the right balance, particularly on transparency related issues, when dealing with the concerns of interested parties and are encouraged that most parts of CESR's Final Technical Advice served as a blueprint for the Level 2 proposals which the European Commission published in February."***

### Pre-trade transparency

During 2005 the Expert Group on Markets finalised the advice on market transparency and admission to trading.

Concerning regulated markets and MTFs the main issue was to specify the exact content of pre-trade transparency for different market models. In order to achieve the necessary harmonisation without hampering market innovation it was agreed that five best bid and offer levels (and respectively the quotes of all market makers in a quote driven system) should be made public. As strongly advocated in the consultation process, in order to cater for different hybrid models, a specific proposal which aims for comparable results was introduced.

Another group of issues on pre-trade transparency related to the different exemptions from the basic transparency (as provided by the Level 1 text). Those relating to the operations of different trading systems (crossing systems/iceberg orders) were recognised by referring to trading methodologies where the price is referred to a price generated in another system and referring to order management facilities operated by regulated markets or MTFs.

It proved a more difficult issue to agree the exemptions for different types of transactions which are concluded outside the order-book but subject to (specific) rules applicable to those trades, often referred to as 'negotiated trades' and other types of exchange of shares where the price is based on other conditions than the current market ignore price. CESR noted that, depending on the markets concerned, such transactions may have a well established role in trading. However, in order to balance the different needs, it was considered necessary to set some conditions for such negotiated trades (in order to qualify as on-exchange trades) which means that the price falls within the current market price and other applicable rules including post-trade transparency are respected.

Finally, concerning the thresholds for large trades qualifying for an exemption from transparency, CESR

ended up with simple fixed thresholds for five different categories of shares, the categories of which, are based on average daily trading value. That solution, although not necessarily as sensitive to the specificities of each individual stock, was chosen in order to keep the regime simple and easy to manage.

On pre-trade transparency for systematic internalisers, the main questions were how to differentiate between internalisers which conduct the activity systematically, from those doing it only incidentally, and how to define the qualifying shares. Concerning the definition of systematic internalisers, CESR chose the combination of (more general) criteria which relate to the matter of how a firm has organised its business. If the business concept of internalising client orders has a commercial role in the business and/or the firm has rules, protocols or practices which govern the activity and it has assigned specific resources (either personnel or technical systems) to the activity, it should be considered to undertake the internalisation on an organised and systematic basis. Additionally, a numerical criterion which relates to the portion of internalisation from the firm's execution business or its share on the overall 'internalisation market' were introduced in order to indicate the business is carried out frequently.

Defining the applicable shares (shares which have a liquid market) proved (as expected) one of the most difficult matters for the group. First, the solution had to reflect the political compromise struck in the Level 1 negotiations and perhaps more importantly, be applicable for all markets within the EU. The latter item is characterised by the very different size and nature of the markets. While different methods were considered, the group finally proposed a set of thresholds relating to the market value and trading activity of the shares. Those criteria were set at a level which indicates trading patterns where a reasonable amount of trading could be expected, in order to make it possible for the internaliser to manage its positions (and on the other hand, be willing to undertake the activity and provide the additional liquidity for



the market). For the interim period before the MiFID Article 25 transaction reporting system will be running, the calculation of the thresholds is based on national trading. Although the aim of the MiFID is to encourage an EU-wide market, the group found it extremely difficult, if not impossible to find figures which reliably covered the whole EU-area. Based on preliminary estimations, the criteria would result in some 450 – 600 liquid shares in the EU, falling within the threshold.

Other proposals on internalisation relate to the calculation of the different thresholds and order handling in relation to the functioning of the system. On several areas the group identified that the content of the Level 1 text was precise enough and no Level 2 provisions were proposed.

#### Post-trade transparency

On post-trade transparency the work included specifying the content of the information which should be published, exemptions for block trades and some practical issues relating to transparency.

On content, the proposal covers the (minimum) elements which were seen to be necessary for markets. Those include, the identification of the share, size, price and time of the trade and in some special cases, additional information. In this regard it was raised in the consultation process that the proposal should be in line with the proposal on transaction reporting (Art. 25 of MiFID). The proposals are not exactly the same as there are some basic differences between the two issues. Whilst Art. 25 reporting is targeted at regulators, post-trade (as well as pre-trade) is targeted at market participants. With regard to post-trade transparency, the content of the information is more limited but the timing is more demanding, whilst in contrast for Article 25, reporting the content of the information is broader in scope but the timeframe longer. However, the proposals do not prevent making use of the systems created for each purpose.

Another issue on post-trade relates to the delayed publication of large trades. As noted in the preparation of the advice and in the consultation process, the practices across Europe for delayed publication, varies a great deal in the different markets, both in terms of the qualifying size threshold and the length of the delay.

Although the group had indicated the preference for simple systems, the proposal on defining the block sizes is more complex than that proposed for pre-trade. The proposal divides shares into three different classes on the basis of average daily trading value. It then provides separate publication delays, varying from 60 minutes up to the end of the second trading day, following the trade (the latter being available only for shares with an average daily trading value less than 1 million euro).

One general issue relating to the market transparency which the group addressed relates to the publication of the information. Whilst the Level 1 text provides for three possibilities for the publication of information, it is essential that the channels used meet certain criteria. Therefore CESR proposed that the arrangements should ensure that: the information is reliable and monitored (and possible errors that may arise be detected and corrected); the information can be published within the required timeframes; the information is available to all interested parties on a reasonable and non-discriminatory basis and that the published data can be consolidated with other similar data.

#### Admission to trading

Regarding proposals for instruments to be admitted to trading on a regulated market, CESR acknowledged that in this area there are already several Directives which concentrate either on information on the issuers and/or instruments (Prospectus Directive, Market Abuse Directive and the Transparency Directive). Therefore, the proposals concentrated on some types of instruments and especially on elements which relate to the tradability of instruments, not covered by these Directives, for example, that an adequate amount of instruments are in public hands (or relating to some instruments, that the liquidity is supported by other means e.g. market making). On derivatives (and derivative securities), a more detailed proposal concerning the information and terms of the instruments was proposed, since they are not covered by the above mentioned rules.

#### Transparency data consolidation

An essential element of the operation of the MiFID transparency regime is that the information from different sources should be available in a consolidated form. MiFID as such, addresses only the availability of the data but the practical consolidation arrangements are left for market forces. CESR puts emphasis on the need for the publication arrangements to not hinder the consolidation of the data. As indicated in CESR's advice some further work may be needed to achieve adequate consolidation. As a first step towards this, CESR organised a round table which brought together the different market participants from end users to providers of the data and data consolidators and disseminators.

#### Statistics of meetings in 2005

The Expert Group on Markets met 10 times during the course of 2005.

#### Next steps

*A consultation on a call for evidence regarding future work on market data consolidation will be conducted in the first half of 2006.*

# Regulatory harmonisation (Level 2)

MiFID

5.1



## Expert Group on Cooperation and Enforcement

### *Chair's message:*

**Michel Prada, President of the AMF, France**

***"The Expert Group on Cooperation and Enforcement prepared advice on possible Level 2 measures in relation to transaction reporting, the obligation to cooperate and cooperation and exchange of information. This is a challenging task for the capacity of competent authorities to monitor markets and intermediaries' behaviours in the new context, whereby MiFID will enhance the business conducted cross-border and probably market fragmentation. Sound arrangements, including the appropriate technical tools, are essential to allow regulators to carry out their responsibilities."***

The activity of the Group consists of some Level 2 advice to the Commission and other aspects that were considered to be better dealt with at Level 3. These latter issues cover specific questions relating to transaction reporting as well as to cooperation and exchange of information. Some of them will be dealt with within CESR-Pol. As to the technical aspects of transaction reporting, it was decided to address them by establishing an 'IT Task Force' that follows the preliminary results of the Technical Task Force. (See section 6.1.2 for further details).

## Technical Task Force

Considering the complexity of the technical systems in Member States and the transposition deadline, CESR saw the need to conduct an in-depth analysis and work on how to exchange transaction reporting data between competent authorities. Therefore, in October 2004, CESR decided to establish a Technical Task Force ("TTF") as a subgroup of the Expert Group on Cooperation and Enforcement.

The Mandate of the TTF comprised two components:

- As a matter of priority, work was undertaken on common data formats and common file formats;
- As a matter for the medium term, work was conducted on common quality standards, infrastructure, and ways and means to exchange the information between competent authorities.

The final report was approved by CESR in June 2005 and was also presented to the European Securities Committee.

The main conclusions of the report on how best to implement the MiFID requirements regarding the

exchange of information in relation to transaction reports were the following:

- Very concrete and operational proposals were presented for data formats and file formats. These formats were designed to allow the effective exchange of transaction reports between competent authorities.
- The need to create and maintain several reference databases in order to allow the proper identification of certain items (e.g. financial instruments) was identified. It was proposed that these databases would be run either at a centralised or decentralised level.
- The Task Force presented some essential recommendations on quality issues concerning the frequency and the timeliness of the exchange of transaction reports between competent authorities as well as on issues related to security and error correction. These issues are key to the overall quality of the arrangements for exchanging transaction reports and some further work needs to be done, which could not be done in the time frame available.
- The work done by the Task Force on how transaction data can be exchanged shows that this can be done via a centralised, decentralised, mixed solution, or through an EU Common Database. The evaluation of the pros and cons of these options and the cost-estimation has not been an easy task. Although the work should not be taken as a scientific and exact exercise, they show that:
  - all options are technically feasible;
  - some functions will have to be centralised in all options;

- the cost for CESR Members will be substantial (overall costs for the creation of the system for exchanging transaction reports is likely to be between €5.5 to €7.6 million; annual costs for running the systems have been estimated at between €2.5 to €3.8 million),
- CESR Members could coordinate their efforts in implementing the requirements under the MiFID, so that costs can be reduced, for instance by conducting common work when developing or adapting their transaction reporting systems at national level.

#### Next steps

*As a matter of priority, CESR will start to work on the realisation of a mechanism to exchange transactions reports among regulators. Some issues deserve particular attention, such as the standardisation of data, governance of the systems, its funding and the timing of the implementation.*

*CESR has established a specific IT Task Force that is considering the different technical options in establishing a mechanism to exchange transactions reports when the Directive enters into effect.*

*Concerning the funding of the system and its establishment and running, it appears that the burden of these costs will be sustained by CESR Members.*

# Regulatory harmonisation (Level 2)

## Transparency 5.2



### 5.2 Transparency

#### Chair's message

**Carlos Tavares, Chairman of the CMVM, Portugal**

*"The availability of regulated information is critical for investor protection as well as for the proper operation of the market and market efficiency. Information is indeed a key component for the evaluation of investment opportunities in financial markets. The idea is that all regulated information on listed companies should be accessed at affordable cost by all investors through one or more officially appointed central databases in each country. By interlinking these national repositories of regulated information, this information should also become accessible to all EU investors irrespective of where they are situated."*

*CESR has been mandated by the European Commission to advise on possible standards leading to a high quality storage mechanism in each Member State and possible ways to create a viable and user friendly storage system at an EU level, taking into consideration at the same time, the cost implications of such a structure. Despite the variety of existing storage systems in the EU and the relevant cost and funding concerns, I strongly believe that a common solution can be achieved at a very high quality level."*

In relation to the Transparency Directive (2004/109/EC), CESR received from the European Commission formal mandates for technical advice on possible implementing measures on the issues of notifications of major holdings of voting rights, dissemination of the regulated information, half-yearly reports and equivalence of transparency requirements for third country issuers (see below under I) and on the issues of storage and filing of regulated information (see below under II).

On 30 June 2005, CESR submitted its final advice on possible implementing measures covering five aspects of the Transparency Directive (Ref. CESR/05-407), in

response to the mandate received from the Commission. The five aspects covered in the advice were issues in relation to:

- Dissemination of the regulated information;
- Notification of major holdings of voting rights;
- Half-yearly financial reports;
- Equivalence of transparency requirements for third country issuers;
- The procedural arrangements whereby an issuer may elect its 'home Member State' competent authority for the purposes of the Directive.

The content of this final advice reflects comments received during two rounds of consultations on CESR's draft technical advice. The first round of consultation consisted of two consultation papers: the first on dissemination and storage of regulated information published in October 2004 (Ref. CESR/04-511) and a second consultation regarding notification of major holdings of voting rights, half-yearly reports, equivalence and procedural arrangements, which was published in December 2004 (Ref. CESR/04-512c). The consultation showed clear preferences in a number of areas. However, in other areas, a clear orientation was not yet visible and therefore in these areas, CESR retained a more open approach as it did in the initial consultation paper. CESR revised its draft advice on the basis of the responses received to this first round of consultation and released on 27 April 2005 for additional consultation, a revised draft Technical Advice on Possible Implementing Measures of the Transparency Directive (Ref. CESR/05-267), addressing all of the issues covered by the mandate of the Commission. The responses to this second consultation have been largely supportive of CESR's approach, but on some specific aspects, led CESR to modify its

#### Mandate

#### **I: The mandate on notifications of major holdings of voting rights, dissemination of regulated information, half-yearly financial reports and equivalence of transparency requirements for third country issuers**

On 29 June 2004, CESR received a mandate from the Commission, requesting advice by 30 June 2005, on a number of different technical issues that can be grouped into three areas:

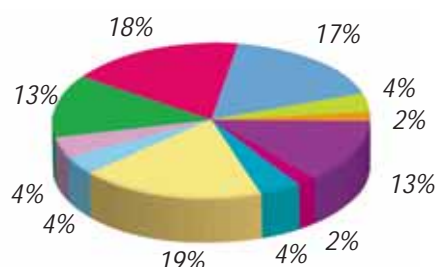
- Technical issues related to notifications of major holdings of voting rights;
- Minimum standards for the dissemination of the regulated information;
- Technical questions related to half-yearly financial reports and to equivalence of transparency requirements for third country issuers.

The European Commission also invited CESR to present a progress report on the role of the Officially Appointed Mechanism (OAM) for the storage of the regulated information by 30 March 2005.



advice in response to significant issues raised by respondents. These issues are set out in the Feedback Statement (Ref. CESR/05-408) covering all of the consultations.

**CESR's revised draft technical advice on possible implementing measures of the transparency directive**  
Total number of responses: 45



In September 2005, the Commission communicated to the European Securities Committee (ESC) its proposals for Level 2 implementing measures on the Transparency Directive (Working Document ESC/34/2005). This proposal consists of a draft Directive and a separate draft Recommendation containing some of the implementing measures proposed by CESR. In general terms, the proposal from the Commission was substantially in line with CESR's technical advice.

A preliminary high-level discussion on the Commission's proposal took place during the ESC meeting of September 2005. A more detailed discussion on an advanced text (Working Document ESC/39/2005) took place at the ESC meeting of November 2005 and will take place in future ESC meetings.

CESR actively participated in all the ESC meetings and submitted to the Commission, general and specific written comments on both texts that were presented to the ESC. Moreover, a bilateral technical meeting between CESR and the Commission took place in October to review, with the Commission, specific questions CESR Members had raised on the Commission's draft. This dialogue will continue.

## Mandate

### II. The mandate on the storage and filing of regulated information

In July 2005, CESR received from the Commission a mandate for technical advice on implementing measures concerning the storage and filing of regulated information. The mandate was annexed to a letter from the Commission, which gave important comfort regarding interim solutions in the transposition, by January 2007, of the Directive requirements regarding OAM, in the expectation of further developed implementing measures. The mandate contains three elements and invites CESR to provide:

- a. By June 2006, an opinion for possible implementing measures on two preliminary issues relating to the architecture for the EU storage network: (a) the agreement on interoperability of the national OAM i.e. how an agreement on technical requirements could allow technical interoperability of the national OAMs and (b) the cost and funding implications for the Member States arising out of the creation of the EU network.
- b. By June 2006, technical advice on the role of the OAM for the central storage mechanism and on the role of the competent authority. More particularly, CESR is invited to determine the minimum quality standards the OAM will have to comply with, such as standards of security, of certainty as to the information source (authenticity), of time recording and of easy access by end users. In respect to the role of the competent authorities, CESR is invited to examine the power of the competent authorities in supervising the OAMs as well as their role in adapting the standards in case of technical developments.



# Regulatory harmonisation (Level 2)

## Transparency 5.2

Moreover, in the same technical advice, CESR is invited to explore the issue of filing of regulated information with the competent authorities. More specifically, CESR is invited to determine minimum quality standards to be complied by the competent authorities in particular in terms of security, of certainty as to the information source and of time recording, and to determine whether the procedure of filing with the competent authority can be aligned with the procedure of filing with the OAM in order to avoid duplicate submission of the same information.

c. By April 2006, an interim report regarding the cost of setting up and operating an OAM that meet the quality standards.

This mandate represents an important challenge for CESR in relation to the highly technical IT issues involved and, in relation to the difficulty of making an appropriate cost analysis for a system which could have several variations.

In March 2005, CESR submitted a progress report exploring the various options on how an Officially Appointed Mechanism (OAM) might function, how an electronic network could be established in the EU and how issuers could file, electronically, regulated information with the competent authorities (Ref. CESR 05/150b).

The report was prepared at the request of the Commission and formed part of the work conducted by CESR on the Transparency Directive.

On 28 July 2005, CESR launched a Call for Evidence on the new Mandate (Ref. CESR/05-493). CESR received 17 responses to the Call for Evidence, from various sectors of the market such as stock exchanges, media and information service providers, IT companies, the banking sector, a Ministry and the issuers.

**Call for evidence on the Mandate to CESR regarding technical advice on possible implementing measures concerning the transparency directive**  
Total number of responses: 17



Further to the reception of this new mandate CESR Members designated experts, including IT experts, for the Transparency Expert Group (TEG) (covered under chapter 6.1.2 of the Annual report) and external experts for a new Consultative Working Group (CWG). In terms of internal organisation, the group set up one drafting group for the preparation of the work and the discussions in plenary meetings of TEG. The new CWG is composed of the following 11 market experts, mostly specialised in IT, finance and economics and representing the issuers, the financial information sector and the stock exchanges:

*Mr Torsten Ulrich, CEO, Boerse-Stuttgart de AG*

*Mr Olivier Leduc, Head of institutional and financial communication Groupe Provimi*

*Ms Ignacion Hernandez-Ros, XBRL International Technology Development*

*Mr Pantelis Lamprou, Athens Exchange*

*Mr Olivier Servais, Permanent Secretary XBRL in Europe*

*Mr Peter Belling, President of Information Services OMX Exchanges*

*Mr Rafal Chwast, Vice President*

*and Chief Financial Officer ComArch SA*

*Mr Hans Maertens, General Director Uitgeversbedrijf Tijd*

*Mr Fabrizio Plateroti, Director of Regulatory Division Borsa Italiana s.p.a.*

*Mr Bernard Simon, Vice President and Chief*

*Information Officer Luxembourg Stock Exchange*

*Mr Mark Hynes, Managing Director Global Investor Relation PR NEWSWIRE*

## Statistics of meetings

The TEG met three times in relation to the mandate on notification of major holdings, dissemination of regulated information and half yearly financial reports, and twice to discuss the content of the mandate and the first drafts on the issues of storage and filing. The TEG met once with the CWG and discussed specific issues of the mandate. During this time, the drafting group met three times to discuss and prepare the papers.

### Next steps

*In 2006, CESR will continue to actively contribute to the formation of the Level 2 measures on notifications of major holdings of voting rights, dissemination of the regulated information, half yearly financial reports and equivalence of transparency requirements for third country issuers (see above under I).*

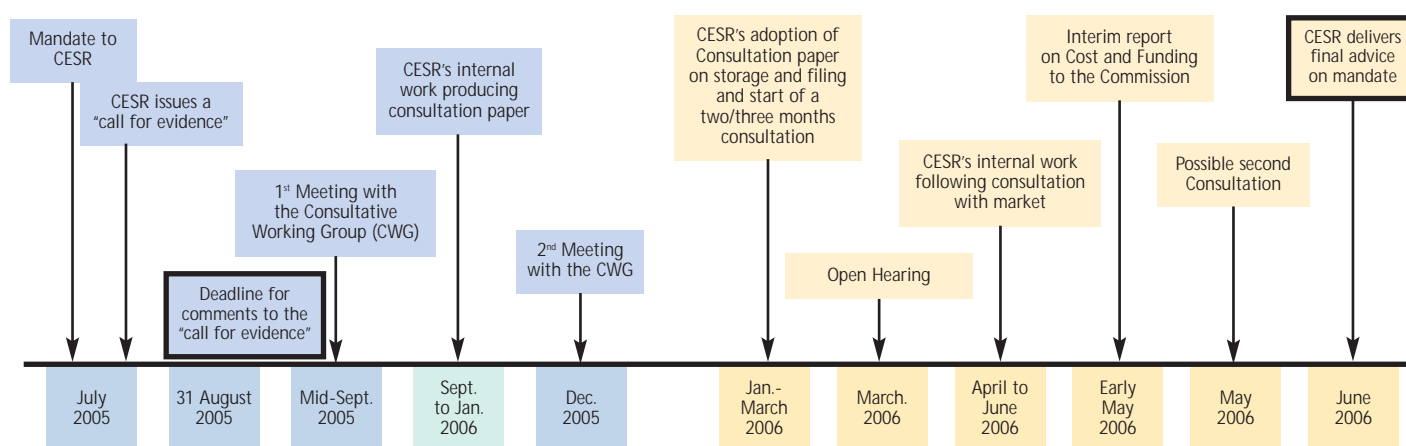
*CESR will also deliver to the Commission the opinion and the technical advice required by the mandate on the filing and storage of regulated information (see above under II).*

*Moreover, CESR will start working on possible Level 3 measures of the Transparency Directive.*

The TEG met again in January 2006 to adopt the first draft consultation paper, for approval at the CESR plenary. A two-month public consultation was launched on 31 January 2006, and CESR organised an open hearing and a Consumers' Day on the issue of storage of regulated information. The TEG also met and discussed the consultation paper with the CWG. In April/May 2006, CESR will submit its interim report on cost and funding. The final technical advice will be adopted by CESR Chairs in June 2006 (for tentative timetable, see below).

The work of the TEG is linked to the work of the newly created IT Task Force (discussed in section 6.1.2). One of the tasks of the IT Task Force is to identify potential technical synergies between the storage of regulated information requirements under the Transparency Directive, and the storage of transaction reporting requirements under the MiFID.

## Indicative CESR Work Plan for the mandate on Storage and Filing under the Transparency Directive



# Regulatory harmonisation (Level 2)

## Prospectus Level 2 5.3

### 5.3 Prospectus Level 2

#### Mandate

##### Mandate of the Prospectus Expert Group

On 2 June 2005 the European Commission issued CESR with a mandate regarding a possible amendment to the requirements in Commission's Regulation (EC) 809/2004 concerning the treatment of historical financial information which must be included in a prospectus. This follows market participants' requests to CESR for clarification as to how this will be implemented on a day-to-day basis and follow up work by CESR itself to ensure supervisory convergence in implementation. The initial findings of CESR's work, and discussion with the Commission, indicated that it might be appropriate to tackle potential differences in implementation by amending the Regulation itself.

The preparation of CESR's advice on this mandate has been undertaken by the CESR Expert Group on Prospectuses, which was chaired by Professor Fernando Teixeira dos Santos, then Chairman of the Portuguese Securities Market Commission (CMVM) and now Portugal's Minister of Finance. A member of the CESR Secretariat, Javier Ruiz del Pozo, assisted the Chairman and acted as rapporteur of the Expert Group.

#### Background

The Prospectus Regulation, which came into effect on 1 July 2005, contains requirements relating to historical financial information which are set out in the annexes adapted to the different types of securities. For example, Annex I of the Regulation contains a schedule of disclosure requirements in relation to shares. This requires the inclusion in a prospectus of 'audited historical information covering the last three financial years (or if appropriate, the shorter period that the issuer has been in operation), and the audit report in respect of each year' (Item 20.1). The primary purpose of including historical financial information in a prospectus is to enable investors to understand the financial position of the issuer. The historical financial information should, therefore, provide a record of the issuers' business, as operated and accounted for by the issuer during the period for which historical financial information is required at the date the prospectus is issued.

Normally, the historical financial information of the issuer reflects the business of the issuer as a whole throughout the required period, including significant acquisitions or disposals. However, there are certain circumstances that arise in relation to public offers or admission to trading of shares, in which the issuer has not prepared its historical financial information as a single business during the whole of the period for which the historical financial information is required under the Regulation (these types of issuers are therefore considered to have a 'complex financial history').

Market participants, especially the representatives of the accountancy profession, encouraged CESR to provide recommendations in order to provide clarity and convergence as to what is required when issuers have a complex financial history.

With a view to determining whether there was consensus between CESR Members on the need, in the case of an issuer with a complex financial history, for a prospectus to contain financial information which goes beyond that directly relating to the issuer, CESR undertook a fact finding exercise.

Examples of issuers with a complex financial history covered by that exercise highlighted cases where the issuer was a newly incorporated holding company inserted over an established business or where the issuer has disposed of a significant part of its business since its last audited accounts.

From the work that CESR carried out, it emerged that some CESR Members required in their current practices, historical financial information not only of the legal entity which issues or proposes to issue securities (which would be the issuer for the purpose of the Regulation) but also in relation to the companies or businesses the issuer acquired during the period for which historical financial information is required on the issuer.

CESR did not issue Level 3 recommendations mainly because the European Commission noted that there was some uncertainty about the extent to which the provisions of the Prospectus Regulation relating to historical financial information will enable competent authorities to require the inclusion of the range of



financial information which they would currently require, in the case of an issuer with a complex financial history.

The Commission considered it desirable to eliminate uncertainty as to the scope of these provisions and to ensure that the requirements in relation to historical financial information met the needs for adequate investor protection in the case of an issuer with a complex financial history. Therefore, the Commission published on 2 June 2005 a mandate to CESR for technical advice. The deadline set by the Commission for the submission of CESR's advice was 31 October 2005.

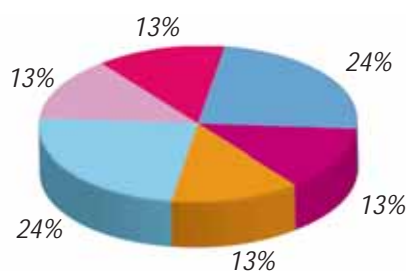
On 27 October 2005, CESR published its advice (Ref. CESR/05-582) to the Commission on a possible amendment to Regulation (EC) 809/2004 regarding the historical financial information which must be included in a prospectus, together with a Feedback Statement (Ref. CESR/05-583).

## Process

Following receipt of the mandate from the Commission, CESR began its work on 3 June 2005 by launching a call for evidence for interested parties to submit comments.

### Call for evidence on the Formal Mandate to CESR for technical advice on a possible amendment to the requirements in Commission Regulation (EC) 809/2004 regarding the historical financial information which must be included in a prospectus.

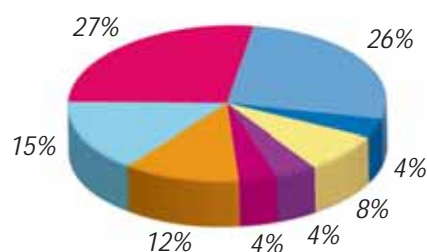
**Total number of responses: 8**



As part of the process of producing its advice CESR published a consultation paper (Ref. CESR/05-428) on June 2005, giving all market participants until 15 September 2005 to submit their views. A public hearing was held in Paris, at CESR's premises, on 6 September 2005.

### CESR's draft technical advice to the European Commission on a possible amendment to Regulation (EC) 809/2004 regarding the historical financial information which must be included in a prospectus.

**Total number of responses: 26**



- Banking
- Credit Rating Agencies
- Individuals
- Insurance, pension and asset management
- Investment services
- Issuers
- Legal and Accountancy
- Regulated markets, exchanges and trading systems

In addition, a Consultative Working Group (CWG) was established to advise the Expert Group. The Prospectus Group met once with the CWG and its members have provided written contributions to the group that were taken into account when the advice was prepared. The members of the CWG were the following:

*Ms Deborah ter Beek, ABN Amro Rothschild*  
*Mr Kevin Desmond, Price Waterhouse Coopers*  
*Mr Axel Forster, Luxembourg Stock Exchange*  
*Mr Wolfgang Gerhardt, Sal. Oppenheim jr. & Cie. K&A, Frankfurt am Main*  
*Mr Alain Gouverneyre, Ernst & Young*  
*Ms Eva Maria Sattlegger, Raiffeisenzentralbank*  
*Mr Nunzio Visciano, Italian Stock Exchange*  
*Mr Martin Pföhler, KPMG Berlin*  
*Mr Jan Buisman, Price Waterhouse Coopers*  
*Mike McKersie, Association of British Insurers*

# Regulatory harmonisation (Level2)

## Prospectus Level 2 5.3

### *Summary of the work done: an outline of CESR's advice*

#### Scope of the proposed amendment of the Regulation

CESR proposes that the Regulation (EC) 809/2004 should be amended to include an additional provision to deal with situations of issuers having a complex financial history. These additional requirements should only be requested in those cases where the Shares Registration Document applies and there should be no distinction between different types of issuers.

#### Concept of complex financial histories

CESR's advice does not provide a definitive list of cases of issuers with a complex financial history. In general, the advice considers that such cases would be those where the issuer has not prepared its historical financial information as a single business during the whole of the period for which the historical financial information is required under the Regulation.

#### Principle based approach

In line with responses to the consultation, CESR's advice proposes that the amendment to the Regulation should not consist of a detailed set of requirements, given that the specific characteristics of complex financial histories do not, by their very nature, follow a standard pattern. As such, the regulatory approach should allow competent authorities to maintain their current flexibility when assessing these situations.

Concerning the actual requirements that would be imposed on issuers with complex financial histories, CESR's advice proposes a limited amendment to the Regulation that would enable competent authorities to require these issuers to provide in their prospectus, historical financial information for the significant businesses or subsidiaries, taking into account a number of principles set out in the advice.

#### Interaction between the advice and requirements on Pro-forma information

In its advice, CESR clarifies the interaction between the requirements of Annex II of the Regulation on Pro-forma information and the historical financial information to which CESR's advice refers. As such,

taking the example of an issuer that has a newly incorporated holding company inserted over an established business in June 2005, two sets of financial information requirements could be necessary in addition to Item 20.1 of Annex I of the Regulation:

- 'Pro-forma information' which portrays the issuer as a hypothetical parent company of the whole business as from the commencement of 2005.
- In contrast, 'Complex Financial Histories information' provides the (historical and actual) individual accounts of each of the businesses for 2005, 2004 and 2003. Pro-forma and complex financial histories requirements are cumulative and do not have the same nature/time coverage.

#### Next steps

*In line with CESR's general objective to promote convergence of practices amongst its Members and in order to ensure adequate legal certainty for cross-border activities in the Single Market, CESR will assess what Level 3 work is needed in respect of the requirements relating to complex financial histories.*

*Once the Regulation is amended CESR members will continue their current practice of sharing practical experience of the application of the Prospectus Regulation to ensure that regulators exercise the necessary flexibility in a way that is consistent and predictable for issuers.*

#### Statistics of the meetings

The Expert Group met three times in 2005.

The drafting groups met another two times during 2005. In addition, a great deal of drafting was done through other means, via the network of CESR members.

One open hearing took place, on 6 September 2005.

## 5.4 UCITS (Level 2)

### Chair's Message

**Lamberto Cardia, Chairman of the CONSOB, Italy**

*"The Expert Group on Investment Management has dedicated a significant amount of work throughout 2005 to deliver advice to the European Commission on its mandate on the eligibility of assets for the investment of UCITS. I am pleased to say that the final result has received unanimous support from CESR's Members and enjoys considerable backing from market participants from whom we had the opportunity to receive more than a hundred comments split over two formal consultations. In addition, the Group has been busy preparing draft guidelines for simplification of the cross-border notification procedure of UCITS, a Level 3 exercise on which CESR and the Commission place great importance.*

*In addition, the Group (in cooperation with the Review Panel) has reviewed the implementation of CESR's guidelines on the transitional provisions of the UCITS III Directive. Implementing these guidelines on time and making sure the implementation is effective is vital to test the functioning of CESR's Level 3 measures. The Group has also reviewed, upon a request by the Commission, the implementation by Member States of the two UCITS Recommendations, which deal with the use of financial derivative instruments and simplified prospectus of a UCITS.*

*Asset Management is one of the priority areas for the Commission. An important task for the Expert Group in 2006 will be to monitor the formation of the Commission's policy on asset management in the forthcoming years, and defining CESR's policy in this regard."*



### Advice on eligible assets for UCITS

The Expert Group on Investment Management has been working throughout 2005 under a mandate received from the European Commission at the end of October 2004 (Ref. CESR/04-586) for advice on possible modifications to the UCITS Directive in the form of a clarification of definitions concerning eligible assets for investments of UCITS. Following a Call for Evidence in late October 2004, CESR published on 18 March 2005, its first draft advice (Ref. CESR/05-064b) and launched a consultation on that paper. CESR's draft advice included proposals on:

- The eligibility of 'structured financial instruments';
- The eligibility of closed end funds;
- The eligibility of money market instruments (MMI) not dealt in on a regulated market;
- The efficient portfolio management as regulated by Art. 21 (2) of the UCITS Directive;
- The eligibility of credit derivatives;
- Index replicating UCITS.

The consultation closed on 10 June 2005 and CESR received more than 50 responses. It was suggested by many consultation respondents that a distinction be made between possible comitology measures at Level 2 and issues that would need to be addressed at Level 3.

Many respondents also asked for the possibility of a second consultation, taking into account the difficult nature of this exercise and the interests involved.

### Mandate

#### Mandate of the Investment Management Expert Group

CESR began working on investment management issues in April 2004 following the transfer of these responsibilities from the UCITS Contact Committee. This work is carried forward by an Expert Group chaired by Lamberto Cardia, Chairman of the Italian securities regulator, the Commissione nazionale per le società e la Borsa (CONSOB).

Two members of the CESR Secretariat, Jarkko Syyrilä and Enrique Velázquez assist the Chairman, the former acting as rapporteur of the Expert Group.

The mandate (Ref. CESR/04-160) and work programme for the Group was approved by CESR in June 2004. Drawing heavily on the responses from the consultation on "The role of CESR in the regulation and supervision of UCITS and asset management in the EU", and the needs expressed by market stakeholders, it was decided that the short-term priority of the group would be to focus on ensuring that the Single Market on investment funds is fully functional. The Expert Group would therefore concentrate initially on three aspects related to the harmonised implementation of the UCITS Directives, namely clarification of some key definitions in the Directives (Level 2), the simplification of the cross-border notification procedure of UCITS and the application of the transitional provisions of the amending UCITS Directives (Level 3). For further information about Level 3 work on Investment Management, see section 6.5.2.

# Regulatory harmonisation (Level 2)

UCITS 5.4

**CESR's Advice on Clarification of Definitions concerning Eligible Assets for Investments of UCITS**  
Total number of responses: 58



**Second consultation on CESR's Draft Advice on Clarification of Definitions concerning Eligible Assets for Investments of UCITS**  
Total number of responses: 49



Another group of respondents stressed that CESR should take into account the cost implications of its recommendations, and that a cost benefit analysis is necessary regarding the possible comitology measures.

In response to this feedback, CESR requested an extension of the mandate from the European Commission of its original deadline of end of October 2005 to mid-January 2006. The European Commission confirmed its consent to the extension of the deadline of the mandate. The importance of progress in this respect has been underlined by the European Commission's Green Paper on investment funds published in July 2005.

On 20 October 2005, CESR published its second consultation paper (Ref. CESR/05-490b). This paper made a distinction between suggested comitology measures and other measures. It also included questions aimed at gathering information from market participants to be used to evaluate the possible impacts of suggested measures. Furthermore, CESR developed the advice on the basis of consultation responses especially regarding the following issues:

**1. The liquidity of transferable securities:** The proposal concerns the liquidity of the transferable security which must not compromise the UCITS' ability to comply with Art. 37 of the UCITS Directive. CESR's advice suggests a UCITS may buy or hold transferable securities of varying liquidities. However, where the portfolio contains a significant number of less liquid securities, the UCITS must keep the situation under appropriate review, to ensure continued compliance with Art. 37;

**2. The eligibility of closed end funds:** CESR is of the opinion that UCITS can be allowed to invest into these kinds of funds upon compliance with certain requirements;

**3. The valuation of money market instruments-amortisation:** CESR's advice does not rule out money market funds using valuation systems based on amortised cost methodology;

**4. The eligibility of derivative instruments on financial indices:** In CESR's view, indices based on financial derivatives or commodities may be eligible provided they comply with certain criteria. CESR also considers that hedge fund indices raise some specific, and in some cases unique issues, and notes that relevant criteria for their construction have not been considered at international level;

**5. Index replicating UCITS:** CESR has called for the professional associations to develop a standardised method of calculation for the assessment of the quality of replication by UCITS.

CESR requested comments and reactions to its revised proposals and to the specific questions raised in the document by 21 November 2005 from both market participants and from retail investors. Almost 50 responses were received. After close scrutiny of respondent's suggestions on the issue of hedge fund indices, CESR has decided to specifically monitor this issue and is willing to reconsider its position by October 2006, after gaining sufficient experience.



As part of the process, a Consultative Working Group was established to advise the Expert Group. The members of the CWG are the following:

*Mr Martin Burda, Member of the Board and Chief Investment Officer, Investiční společnost České spořitelny, a.s.*

*Mr François Delooz, Global Head of Risk Management, Compliance and Legal BNP Paribas Asset Management*  
*Dr Stefan Duchateau, Chairman of the Board KBC Asset Management*

*Mr Göran Espelund, President Lannebo Fonder AB*

*Mr James Fim, General Counsel - Europe, Middle East and Africa, Russell Investment Group*

*Mr Rafik Fischer, Chief Operations Officer, Kredietbank S.A. Luxembourg*

*Mr Felix López Gamboa, Chairman, BBVA Gestión*

*Dr Wolfgang Mansfeld, Member of the Board, Union Asset Management Holding AG*

*Mr Gianluigi Costanzo, CEO, Generali Asset Management*

*Mr Zoltán Nagy, Managing Director, IE Investment Fund Management Co. Ltd*

*Mr William Nott, Chief Executive Officer, M&G International Investments Ltd*

*Mr Vesa Puttonen, Professor in Finance, Helsinki School of Economics*

*Mr Peter Reisenhofer, Board Member, C-Quadrat Investment AG*

*Mr E. Willem van Someren Gréve, Senior Executive Vice President, Robeco Asset Management*

*Ms Ana Rita Viana, Deputy Manager,*

*AF Investimento – Fundos Mobiliários, SA*

*Mr Jean-Pierre Paelinck, Secretary General, Euroshareholders*

### Next steps

*The Expert Group delivered its final advice on Eligible Assets on 26 January 2006. The transposition of CESR's advice into legal text by the European Commission – which will probably take the form of a Regulation – could be ready as early as end of summer 2006. The Expert Group will also examine the question of hedge funds in 2006.*

## Statistics of meetings in 2005

With regards to the advice on the eligibility of assets, the Expert Group met on five occasions in 2005 and the Consultative Working Group had three meetings. The Group also held two open hearings.

## 6.1 Policy

### 6.1.1 Developing financial supervision in the EU

#### 6.1.1.1 The role of CESR under Level 3 – two strategy papers

In 2004, CESR delivered two strategy papers regarding its role in the years to come. The first focused on the role of CESR at Level 3 under the Lamfalussy process (Ref. CESR/04-527b). The second, called “Which supervisory tools for the EU securities markets” – the Himalaya report (Ref. CESR/04-333f), developed the strategy with a longer-term perspective. In relation to both these papers, CESR consulted widely with the market and gained a great deal of support for many of the suggestions and priorities proposed.

Furthermore, the European Council's Stockholm Resolution<sup>1</sup> noted that “national regulators and CESR should also play an important role in the transposition process by securing more effective cooperation between supervisory authorities carrying out peer reviews and promoting best practices, so as to ensure more consistent and timely implementation of community legislation in Member States”.

Level 3 is one of the four stages foreseen in the original Lamfalussy report. It is defined as having the purpose to:

- produce consistent guidelines for the administrative regulations to be adopted at national level;
- issue joint interpretative recommendations and set common standards regarding matters not covered by EU legislation – where necessary, these could be adopted into community law through a Level 2 procedure;
- ensure effective enforcement throughout the Union and define best practice.

Level 3 is essential as a means of improving convergence and consistency in the day-to-day implementation and application of Level 1 and 2 legislation by CESR Members. It is the responsibility of the national regulators to set up a framework of strengthened cooperation and networking with a view to ensuring consistent implementation. In the CESR's Level 3 strategy paper these activities are identified as coordinated implementation of EU law; regulatory convergence; and, supervisory convergence.

In the Himalaya report the group identified three critical areas to be given priority attention: a) streamlining reporting obligations and reducing the burden of compliance costs; b) continue to advocate for similar and equivalent powers; c) the home/host relationship, including the developments of joint

operations. The Himalaya Task Force also identified other issues which are directly or indirectly related to the above mentioned priorities. These were: i) development of databases; ii) development of a mediation mechanism; iii) an effective peer-review mechanism, and iv) development of a policy vis-à-vis retail investors (to increase involvement in policy making and establishing what role CESR should play in relation to national efforts to educate consumers).

#### Level 3 supervisory convergence tools and beyond

The main idea put forward in the Himalaya report is that the degree of integration varies significantly in the EU and that securities regulators should develop an adaptive strategy to accompany the progressive integration of markets. The greatest priority for CESR now is to deepen the cooperation arrangements under the Financial Services Action Plan (FSAP) to enhance the supervisory relationship between authorities and improve the convergence of approaches and decisions.

The responses and results coming out of the work of the Himalaya group were varied in nature and are in the process of being turned into concrete projects within CESR. CESR is currently working on a number of different work streams, thereby addressing all the issues which were identified as important for further enhancing supervisory convergence. The Review Panel, the mediation mechanism, the IT-Task Force and the investor protection seminars all deal with issues highlighted as important for a successful day-to-day implementation of the FSAP measures. CESR's cooperation with the other Lamfalussy Committees is another important element for achieving supervisory convergence. These different work streams are described in separate sections below.

#### 6.1.1.2 EU Institutions' work on financial supervision

The Himalaya report was sent to the EU Institutions as a contribution to their work and deliberations for the definition of the EU strategy in the area of Financial Services in the next five years. In the report of April 2005 prepared by Ms Ieke van den Burg MEP [A6-0087/2005], the European Parliament stated it:

*“Welcomes the so-called ‘Himalaya’ report brought forward for consultation by the CESR as a good starting point for further discussion, and agrees with a number of its core recommendations notably on the need for convergence of supervisory powers, responsibilities and practices, subject to parliamentary control; recommends a coordinating role for the CESR, the Committee of European Banking Supervisors (CEBS) and the*

1- Resolution of the European Council on more effective securities market regulation in the European Union, Stockholm, 23 March 2001.

*Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS), building on the current supervisory framework, close cooperation between them and, above all, appropriate action by Member States to adapt working methods and increase where necessary the resources of the national supervisory systems."*

The European Commission included a significant section on supervisory convergence in its White Paper published in March 2005 stating that, in order:

*"To deliver common decision-making and enforcement practices – in particular for multi-country or cross-sectoral groups – joint inspections, peer reviews and practical measures such as staff exchanges, joint training between supervisors, exchange of information and expertise should be developed ambitiously over the next 5 years."*

Finally, in the European Council in December 2004, the ECOFIN expressed that it wished to enhance integration in the financial sector emphasising

the convergence of supervision and implementation. The ECOFIN asked the Financial Services Committee (FSC) to provide a strategic overview of how the framework for financial regulation and supervision should be developed over the next years. The FSC mandated a subgroup, chaired by Mr Thierry Francq, to produce a report on the matter of how supervisory convergence could be enhanced in EU. The report was delivered for the September 2005 meeting of the EFC/FST. Based on this report, a set of key recommendations will be discussed by Ministers at the May 2006 ECOFIN.

The recommendations favour mediation as an important tool for supervisory convergence and emphasises the use of a peer review in order to promote supervisory convergence. Streamlining reporting and developing common databases are also areas covered. Exchange of staff, joint inspection teams and secondments are other measures mentioned which should also enhance supervisory convergence.

# Supervisory Convergence (Level 3)

## Policy 6.1 Policy

### 6.1.2 IT Task Force

The adoption of the FSAP will bring about greater cooperation and sharing of information amongst supervisors. In particular, the Directive on Markets in Financial Instruments (MiFID) sets out requirements in the area of cooperation and enforcement between competent authorities (Article 25 (3)) that competent authorities establish the necessary arrangements to ensure that the competent authority of the most relevant market, in terms of liquidity, receives the transaction reports that investment firms are obliged to report to the competent authority. It will therefore be necessary to develop a transaction reporting system through which the 27 members of CESR can send and receive transaction reports.

As described in more detail within Section 5.1 of this report, CESR has delivered advice to the European Commission on the methods and arrangements for reporting financial transactions for the purposes of Article 25 (5) of MiFID (Ref. CESR/05-204c), and Article 7 (3) (a) of the Commissions Regulation Working Document Ref. ESC/7/2005 which stated that CESR shall “coordinate and design the establishment of the arrangements for the exchange of transaction information between competent authorities”.<sup>1</sup>

Although the exact cost of developing a transaction reporting system for these purposes has not been established at this stage, it is clear that the requirements of MiFID will require CESR Members to either build from scratch or adapt existing transaction

reporting systems which will involve a substantial investment in IT.

Furthermore, the Transparency Directive will introduce requirements for listed issuers of securities on regulated markets to disclose information in a manner which will ensure quick access to this information in a non-discriminatory way. As such, the Directive proposed that the information be made available electronically by an Officially Appointed Mechanism (OAM) in each Member State. CESR has therefore been requested to prepare advice with a view to facilitate public access and to create an electronic network which links the OAMs creating a single electronic network, or platform of networks across Member States. This work is described in more detail under Section 5.2 in this report, nevertheless, CESR has decided to adopt a co-ordinated approach to these issues and in order to establish to what extent these two Directives can draw on common experiences in developing the necessary IT systems.

The IT Task Force is chaired by Hector Sants, Managing Director of the UK Financial Services Authority, and currently has members from 10 CESR Members participating in it.

Following formation of the group and the working out of a mandate in late 2005, the first meeting of the IT task force was held in January 2006, it is anticipated that the groups work will finish on or around June 2006, following which the groups' recommendations may be taken forward by another group.

### Mandate

#### Mandate of the IT Task Force

In order to implement the MiFID and Transparency Directives, CESR is likely to be asked to play a role in facilitating the interconnection between CESR Members' IT systems for transaction reporting and for the storage of regulated information, i.e. information to be disclosed under the Market Abuse Directive (inside/price sensitive information and directors' dealings) and the information to be disclosed under the Transparency Directive (namely regular reports and major holdings notifications).

In this context, taking into account the technical work achieved for the MiFID and the on-going work under the Transparency Directive, the objective of the Task Force is to:

- prepare a policy and operational paper that will help the Members of CESR to take a concrete decision on the best way forward, and the relevant EU institutions (European Commission, European Parliament, European Council, EU Member States) to support politically and in terms of resources the final strategy. The paper will cover in particular: the major technical choices which should be adopted, the governance of a possible common IT network and the related funding issues;
- clarify the technical options for the establishment of an IT network which may facilitate the exchange of transaction reports, as well as considering the interconnection of national storage mechanisms and identifying any possible synergies between the two projects;
- propose accordingly the way in which CESR should be organised internally. The proposal will clarify in particular: the responsibilities in carrying out the various steps of the project, the sharing of estimated costs, the legal aspects as well as the staffing consequences and/or the outsourcing of certain functions.

<sup>1</sup> - Draft Commission document on the methods and arrangements for reporting transaction in financial instruments, the contents of such reports, the exchange of information between competent authorities, and the determination of the most relevant market of a financial instrument in terms of liquidity cooperation and enforcement.



### 6.1.3 Developing CESR's Retail Investor Policy

CESR organised a Retail Investor Workshop in Valencia, Spain, on 28 November 2005. The purpose of the workshop was two-fold. Firstly, CESR wished to review how it might become more effective in engaging retail investor associations in its consultation process. Secondly, as education is a critical tool to protect retail investors and their confidence is an essential element in ensuring the success of the Single Market in retail financial products, CESR wished to explore if it should play a role in assisting the Members' existing national efforts to educate investors, and if so, how.

The participants included representatives from national, European and international consumer associations, as well as the CESR Members with responsibilities for consumer education. The discussions throughout the day were facilitated by presentations from the different associations present, and included remarks from Mr Garcia Margallo MEP, Vice-Chair of the Economic and Monetary Committee, and Ms Sarah Lynch, on behalf of the European Commission.

#### Main points of discussion

Before beginning to discuss the measures CESR could adopt to enhance the participation of representatives of retail investors in CESR's work, and the potential role for CESR in investor education, the representatives of retail investors shared their views on a number of key issues regarding investor protection.

#### Investor protection – general issues raised

There was some discussion regarding the appropriate term for retail investors. Much of this discussion reflected that the level of investor knowledge and experience differs significantly. As such, their respective concerns and needs vary. The discussion did not seek to achieve consensus on a term which could capture the diversity of the individuals in question.

Consumer associations and shareholders associations expressed a need for greater protection of investors, not only in the sense of rules, but more visible enforcement of the rules, and they stressed they do not want to see a move towards more self regulation. In particular, they wished to see a change in spirit on behalf of industry towards action which reflected their desire to enhance trust.

Attendees expressed the need for a high degree of vigilance in relation to financial promotion. They were of the view that greater clarity is needed in relation to the differences between 'execution only', 'advice', 'recommendations' and marketing. The consistency of qualifications of advisors was noted as an issue along with the issue of suitability of products marketed to the wide range of retail investors. In particular, concerns were expressed in relation to the transparency of fees and commissions. In this regard, it was suggested that the way these are presented might be harmonised to enable retail investors/consumers to compare products more effectively. The impact of compounding fees was illustrated by an attendee, and it was suggested that it should be made compulsory for providers to clearly state their annual charges with an indication of the impact of these over time.

They flagged, in particular, that clearer statements regarding the risks would be strongly welcomed, and a recognition that there are very different categories of retail investors and hence, the need to establish the suitability of products is particularly critical. Greater consistency also needs to exist in relation to products which are very similar in nature but do not have the same regulation, for example, unit-linked insurance products as opposed to a collective investment scheme.

Regarding information, attendees said that it should be recognised that there is a significant information imbalance between industry and consumers and this gap needs to be closed. Disclosure of information should be the priority, however, information should be focused to ensure key information is given (recognising that too much information by its very nature can 'kill' the value of information) and finally, this information should be presented in plain language in order to be easily understood.

The concerns of investor associations in relation to shareholders' rights issues were noted. The various issues identified included the balance of power in companies and the difficulties this posed for minority shareholders. In addition, the difficulties for minority shareholders to exercise their rights on a cross-border basis was mentioned, and perhaps more ways should be explored to ensure that they can participate in annual general meetings even by electronic means.

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## Policy 6.1 Policy

### Enhancing CESR's Consultation Process

The attendees raised several points regarding potential improvements to CESR's working process which would increase their involvement:

- The adoption of an ongoing dialogue should be encouraged by reversing the existing consultation process to ensure that, at an early stage, CESR seeks out their general views on what areas they consider to be priorities and of concern;
- CESR could help increase visibility for the issues of investor protection amongst politicians;
- The three Level 3 Committees could help spread/share good practice;
- National supervisors could assist further their national consumer/investor associations enabling them to engage in CESR's work;
- Translation of a summary into the national language, and simplification of the language used in consultation documents;
- The importance of having a forward timetable for future work.

### Information needed by consumers

The difference between investor education and the provision of information was noted. In particular, the distinction lies in providing factual information versus developing skills and knowledge in order to enable investors to assess products.

Attendees were keen to stress that education is a valuable tool but that it should not be seen as an alternative to rules and strict enforcement of these

rules. In addition, it was noted that education should be viewed as a 'long-term approach'.

There are different types of 'audience' which need to be targeted and this is critical to recognise in developing an effective educational programme. For example, there are those who really know nothing (and who probably do not buy any products now) those who think they know a little but in reality do not know enough, and those who already have a good understanding (probably developed over a lifetime of experience buying securities products). Attendees thought the first target group should be those who think they know but in reality do not, as they are often less conscious of the risks. However, these are by nature the hardest to reach. The second priority should be the group of potential investors who know nothing. The question of how much resources is put into educating this latter group depends on the vision of the Single Market, in particular, whether Europe wishes to encourage more people into the market place or, whether we are simply trying to increase the confidence amongst existing consumers/investors.

Attendees identified the following 'information needs' of consumers/investors in relation to cross border investments:

- Information regarding how they know which regime/law applies;
- Information on which compensation scheme applies;
- Details on the applicable complaints process;
- Warning notes on unauthorised investment services;
- How to find who is authorised/registered/licensed and an explanation of what the different terms





might mean in practice. However, the ideal would be to avoid differences in the use of terms such as these, as they might confuse investors, leaving them uncertain and suspicious as to what this may mean in terms of protection.

Attendees indicated more information was needed for target groups of population including schools and retired citizens.

More could also be done to publish warnings and sanctions as this has an educational impact, both by way of drawing investors' attention to the potential risks but also in increasing market confidence.

In identifying potential priorities the attendees noted they would like to see more class actions and a European Ombudsman to deal with complaints.

### Establishing if CESR has a role in investor education and if so, what that might be

The consumer and shareholder associations expressed the view that they would, and should, have a major role as deliverers of consumer education.

Attendees shared their views regarding the potential split of responsibilities between CESR and its Members who are delivering consumer information and in many cases, education, at a national level. Generally, in relation to CESR's role (and therefore the work carried out on a pan-European basis by the Members), it was felt that there was a role but it was limited mainly to providing information for EU investors and

to facilitate the sharing of experience amongst members on good practice regarding consumer education. Essentially this consisted of the following elements:

- Raising political awareness of the need for resources to be allocated to consumer education;
- Providing an incentive for national supervisors and industry to be more active;
- Providing an effective network for members to share best practice;
- Some limited work in relation to cross border issues, for example, providing in one place information on the various regulators;
- Information on how to check if a firm is authorised and regulated (i.e. links to the relevant national data-bases);
- Information on which law applies in cross border cases and who the ombudsmen are in each country, as well as the compensation schemes that exist;
- A checklist of questions to ask when buying a product cross border.

For this core information to be useful, however, it would have to be provided in all the national languages. Finally, it was thought that CESR could also provide higher visibility of warnings and sanctions.

Views expressed on the role of national supervisors on consumer education can be summarised as follows: They play a key role in encouraging consumer education providing fact sheets, disclosing warnings and sanctions etc. They also felt that supervisors were best placed to carry out surveys that would



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assist in the preparation of educational material and should work closely with the national ombudsmen.

The views expressed by the representatives of retail investors during the meeting in Valencia were considered fully by the CESR Chairs and as a result the Members agreed that it would be useful to undertake a regular yearly (or year and a half meeting) with investor associations, with more focused additional meetings with representatives of individual investors on specific dossiers that CESR is consulting on throughout the year, where appropriate. However, this latter type of meeting should be done in a flexible manner to ensure it is focused on those issues with a direct relevance to investors, given their limited resources and time. CESR Members agreed in the future to translate a brief summary of the consultative paper (which would be prepared in particular with retail investors in mind) or, to provide a translation orally via a meeting/phone call with their national associations. Various options for CESR expert groups were proposed on how they would organise these more specific focused consultations with investors. However, further work needs to be done on this to establish good practice. Members were also of the view that CESR should do more to communicate

effectively its work to protect investors and the high importance given to this.

In relation to CESR's role in providing investor education, CESR Chairs agreed that CESR itself is not best placed to provide education and that this is best done at Member State level. That said, CESR could facilitate the sharing of best practice and experience developed by the CESR Members on effective methods of investor education and assist in sharing material developed which could easily be adapted. As such, it was thought that it would be useful to have a network of specialists on consumer issues which would be in regular contact.

It was also thought that whilst the CESR website would not be the first port of call for investors, it may be helpful for some information to be made available to investors on buying services cross border (for example, who the regulators are in each country, how to contact them, languages spoken/the complaints mechanism and compensation mechanisms etc). CESR will elaborate this further in the course of 2006.

The creation of a network of CESR Members' consumer specialists will be undertaken to share best practice and to assist with cross border complaints.

### Next steps

*Further work will be done to support the facilitation and sharing of best practices and experience, Guidance for expert groups to follow in relation to enhancing CESR's consultation practices for retail investors will also be established. To avoid delay, on 20 March 2006, using the adapted approach proposed, following the workshop with investor associations in Valencia, CESR consulted consumer associations on storage of information having provided them with tailored questions and a summary of the main issues of interest to investors.*

*A small taskforce of CESR Members will be gathered to prepare some draft proposals on information that could usefully be made available to retail investors via links from national securities supervisors to CESR's website.*





## List of attendees at CESR's workshop in Valencia on 28 November 2005

### Consumer Associations

- Helmuth Frey, IVA, Austria
- Jean-François Biernaux, Test-Achats, Belgium
- Michael S. Olympios, Cyprus Investor Association, Cyprus
- Karel Pavlik, Sdru ení obrany spot ebitel eské republiky, Czech Republic
- Claus William Silfverberg, Danish Shareholders Association, Denmark
- Klaus Struwe, Danish Shareholders Association, Denmark
- Jouni Kinnunen, Finnish Shareholder's Association, Finland
- Nicolas Reliquet, AFER, France
- Dorothes Kleine, Verbraucherzentrale Bundesverband, Germany
- Maria Sarantiti, INKA, Greece
- John Maher, Consumer Consultative Panel, Ireland
- Mariella Patriarca, ADOC, Italy
- John Peter Tollefsen, Aksjonærforeningen, Norway
- Jaroslaw Dominiak, Polish Retail Investor Association, Poland
- Jorge Duarte, DECO, Portugal
- Bostjan Krisper, Slovene Consumers Association, Slovenia
- Lars Forsgårdh, Swedish Shareholders Association, Member of the CESR Market Participants Consultative Panel
- Manuel Pardos Vicente, ADICAE, Spain
- Paul Salvidge, FSA Consumer Panel, UK

### International

- Marilyn Skiles, IFIE
- Isabel Pastor, IOSCO

### European organisations

- José-Manuel Garcia-Margallo, MEP, Vice-Chair of ECON
- Sarah Lynch, EU Commission
- Robin Jarvis, FIN-USE
- Fernando Zunzunegui, FIN-USE
- Lars Milberg, Euroshareholders



## 6.2 Monitoring

### 6.2.1 Review Panel

#### Chair's Message

**Kaarlo Jännäri**, Chairman of Rahoitustarkastus, Finland, and Vice-Chairman of CESR

*"For the Review Panel, this has been an important year in which we have fine-tuned our methodology to conduct future reviews of implementation with the aim of ensuring that supervisors implement standards and rules agreed on a day-to-day basis, in as consistent and convergent a manner as possible. The Review Panel has already begun to deliver results by conducting a review of the CESR Cold Calling Standards and has commenced a review of the Members' implementation of Standard Number 1 on Financial Information. In addition, at the European Commission's request, the Panel reviewed the implementation of the EU recommendations on UCITS, and commenced its evaluation of the implementation of CESR's Guidelines on the transitional provisions for UCITS III. There has also been a change of focus from CESR Standards to review the implementation of some of the FSAP Directives, namely the Market Abuse Directive and the Prospectus Directive, for which the Review Panel has commenced a mapping exercise of the supervisory powers that each Member has been given nationally, against the powers required for the regulation of these Directives. Looking ahead, 2006 will be a busy year for the Review Panel as the focus of CESR's work generally shifts progressively from the provision of Level 2 advice to the Commission, to the development of the necessary supervisory tools for Level 3. There will also be some 'house keeping' in the form of reviewing existing CESR standards in the light of the implementation of a number of FSAP measures that have recently come into effect or will be implemented in the near future."*

#### Mandate

##### Mandate of the Review Panel

The 'Stockholm Resolution' adopted by the European Council on 23 March 2001 stated: "The Committee of European Securities Regulators should also contribute to the consistent and timely implementation of Community legislation in the Member States by securing more effective cooperation between national supervisory authorities', carrying out peer reviews and promoting best practice."

To fulfil this important task, CESR established the Review Panel, in March 2003. The Panel, chaired by Kaarlo Jännäri, Vice Chairman of CESR, is a permanent group comprising the representatives of each CESR Member. The Review Panel is mandated to review the implementation (day-to-day application) by all CESR Members of CESR standards and guidelines into national rules and of EU legislation where requested by the European Commission. The Chairman is assisted by Geraldine Levy, Director of horizontal issues at the CESR Secretariat.

#### The Review Panel's Methodology

In April 2005, the Review Panel published its paper on general methodology for implementation of reviews undertaken by CESR. The document aims at setting out the methodology used by the Review Panel when assessing the level of implementation of CESR standards and other Level 3 measures and also at providing the procedural framework for the carrying out of reviews.

#### Reviewing implementation of the European Commission's two Recommendations on UCITS

The Commission published on 30 April 2004 two recommendations which deal with the use of financial derivative instruments for UCITS and some of the key content requirements for the simplified prospectus of UCITS. The Recommendations were developed in response to concerns regarding potential inconsistencies in implementation between Member States.

In the autumn of 2004, the European Securities Committee (ESC) discussions confirmed the continued importance of transparency regarding the steps taken by Member States' authorities to give effect to the Commission Recommendations. The implementation of the Recommendations is key if the UCITS III Directive is to be fully effective and its Single Market benefits fully realised. The Commission therefore asked CESR to conduct a detailed survey on the implementation of the Recommendations. This survey was conducted by the Expert Group on Investment Management, with the assistance of the Review Panel.

On 7 July 2005, CESR published a report (Ref. CESR/05-302b) with results of the survey reviewing the implementation of two Commission Recommendations. The report has also been given to the Commission and the ESC, as a basis for further discussion.

The report concludes that overall implementation of the Recommendations is generally satisfactory across Member States, with a number of Member States having implemented the Recommendations into their national rules almost on a word for word basis. Most of the other Member States have implemented the Recommendations with some adaptation to wording but have provided a high degree of consistency. A group of several Member States have indicated that the implementation of the Recommendations was underway, either because a public consultation was taking place or measures were under internal consideration by the national authorities.

### Reviewing implementation of CCSR standards/recommendations/guidelines and the Mapping exercise of the supervisory powers

During the year, the Review Panel has also worked on four other areas. The first being another review in the area of UCITS, the second being in the area of financial information and the CCSR Standard No. 1, the third area included a review on the implementation of the CCSR Cold Calling Standards, and finally the fourth area included the mapping exercise of supervisory powers.

### Implementation of CCSR Standard on Cold Calling

CCSR conducted a common review of the implementation of the Investor Protection Standards related to Standard 18 and Rules 19 to 28 on Cold Calling (Ref. CCSR/01-014d). CCSR Rule 24 was not included in the examination because of many incompatibilities with the EU Directive on Distance Marketing of Financial Services.

Following approval of the General Methodology for undertaking such implementation reviews (Ref. CCSR/04-711b), the Review Panel decided on detailed assessment criteria which formed an additional basis for the common implementation review. The CCSR members conducted self-assessments of the implementation of the Standard and the Rules which were then reviewed by the Review Panel. Following the completion of the self-assessments, the Review Panel made its assessment of the implementation of the Standard and the Rules and established that four Members provide for a general prohibition of cold calling. One Member's jurisdiction has fully implemented and 11 have partially implemented the Standard and the Rules. 11 Members either do not regulate or have not implemented the Standard and the Rules and out of these, five have taken steps to implement them. The final report (Ref. CCSR/04-580b) was published on CCSR's web site on 3 January 2006.

### Implementing CCSR guidelines on the Transitional Provisions of the UCITS III Directive

The Review Panel was mandated to review the implementation of guidelines for supervisors on the transitional provisions for amending the UCITS Directive (Ref. CCSR 04-434b.).

This review was divided into three separate phases: In a first phase the guidelines concerning the simplified prospectus were reviewed. The guidelines were to be implemented by 30 September 2005. The review was conducted with two questions aimed at providing results from the perspective of a Home Member State, i.e. when grandfathered domestic UCITS I funds are required to have a simplified prospectus available after the deadline, and as a Host Member State, i.e. whether grandfathered foreign UCITS I funds are allowed to market their funds in a Host Member State after the deadline without a simplified prospectus respectively. The results showed that many Member States had not implemented the guidelines by issuing any specific regulatory measures, especially from the Host Member State perspective. Instead, the implementation is being carried out by the regulators in the execution of daily supervisory practices i.e. the national regulations are interpreted according to the CCSR guideline. The effectiveness of this type of implementation is not clear. However, the implementation seems not to have been fully effective in some Member States. The Review Panel will continue to monitor the issue during the course of 2006.

In a second phase, the implementation of the guidelines related to the next deadline, 31 December 2005, was reviewed. This part of the guidelines concerns UCITS I funds of a single fund structure, authorised between 13 February 2002 and 13 February 2004, as well as UCITS I umbrella funds. By 31 December 2005, UCITS I funds of single fund structure authorised between 13 February 2002 and 13 February 2004 had to be converted to the UCITS III regime. By the same deadline UCITS I umbrella funds, which have launched additional sub-funds after 13 February 2002, were required to be converted to the UCITS III regime. The results of this exercise showed that many Members have not implemented the guidelines by issuing any specific regulatory measures. Instead the implementation is being carried out by the regulator in the daily supervisory practices, i.e. the national regulations are interpreted according to the CCSR guidelines.

Therefore, whether the implementation by the Home Member State authorities of the required conversions to UCITS III by 31 December 2005, as requested by the CCSR guidelines, is really effective at the actual fund level, will only be seen in practice now that the

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deadline has been met, i.e. during the coming months. It is therefore important for CESR to continue monitoring the situation carefully and take action if necessary.

The third phase of the review of the CESR guidelines, in which the last deadline of 30th April 2006 for grandfathered UCITS I management companies to launch 'passportable' UCITS III funds, has started. The final results of this will be reviewed during the course of 2006.

### Implementation of CESR Standard No. 1 on Financial Information

The Review Panel commenced its assessment of the Standard No. 1 on financial information (Ref. CESR 05-464b) in July 2005, following the development of an extensive and detailed questionnaire that Members were asked to complete during the course of the summer. The detailed assessment criteria take into account the principle-based nature of Standard No. 1. Following the first stage of the process (self assessment) whereby members answer the questionnaire and assess the extent to which they have implemented Standard No. 1, which was completed in October, the Review Panel commenced the second phase (peer review) whereby the self assessments are reviewed by other CESR Members.

It is anticipated that the self assessments will be published during the first half of 2006.

### The Mapping Exercise of the Supervisory Powers

In October 2005, CESR agreed that the Review Panel should do a follow up of the mapping of supervisory powers given to securities supervisors in Member

States, that the Review Panel conducted in 2004, the final results of which were reflected in the form of an Annex to the Himalaya report. It was agreed that, as a first step, the Review Panel should focus on the powers, that the CESR Members have in relation to the FSAP Directives that have already been implemented, namely the Prospectus Directive and the Market Abuse Directive. The expansion of this exercise to other Lamfalussy Directives and the UCITS Directive will be reviewed during the course of the first half of 2006.

The Review Panel commenced the mapping exercise in December. The work was started by drafting a questionnaire for the purposes of a self assessment to be conducted by the CESR Members during the first half of 2006.

#### Next steps

*2006 will see the completion of the review of:*

- *the implementation of CESR Standard No. 1 on Financial Information;*
- *the implementation of CESR guidelines on the transitional provisions of the UCITS III Directive;*
- *the Mapping exercise of Members' powers in relation to the Prospectus Directive and the Market Abuse Directive;*
- *the other CESR Standards in the light of the implementation of a number of FSAP measures that have recently come into effect, or, will be implemented in the near future.*

## 6.2.2 Credit Rating Agencies

### Chair's message

**Ingrid Bonde, Director General of Finansinspektionen, Sweden**

*"The extensive dialogue with market participants that CESR undertook before producing its advice has had the very positive effect of increasing the level of understanding of the needs of all the players involved in the Credit Rating Agencies business. CESR proposed that for the time being Credit Rating Agencies should implement the International Organisations of Securities Commissions (IOSCO) standards rigorously. Recognising, however, that even in an environment where there is an absence of regulation, transparency will be key to ensuring that both securities regulators and stakeholders in the work of Credit Rating Agencies, be it the users of ratings or the companies subject to rating, can maintain existing levels of confidence in the operations of Credit Rating Agencies. As such, we look forward to maintaining a rigorous dialogue with the Rating Agencies regarding the measures they put in place to implement the IOSCO Code."*



### Background

The European Parliament called on the European Commission to submit by 31 July 2005 its assessment of the need for appropriate legislative proposals to deal with the operations of Credit Rating Agencies (CRAs). In view of this deadline, CESR was requested to provide advice by 1 April 2005, to assist the Commission in establishing whether or not a need existed, for introducing European legislation on CRAs.

### Process

CESR therefore established a Task Force responsible to developing the advice to the Commission. The Task Force was chaired by Ingrid Bonde, Director General of the Swedish Finansinspektionen and supported by Javier Ruiz del Pozo from the CESR secretariat. In addition, representatives from the Commission and from the Committee of European Banking Supervisors (CEBS) took part in the Task Force as observers.

The Task Force developed its work during the second half of 2004, following a call for evidence on 28 July 2004 (Ref. CESR/04-394). This led to the publication on 30 November 2004, of a consultation paper (Ref. CESR/04-612b) on the full range of the issues covered by the mandate. The consultation period closed on 1 February 2005.

### CESR's advice

On 30 March 2005, CESR submitted its advice (Ref. CESR/05-139b) and a Feedback Statement (Ref. CESR/05-140), which drew on comments received during the course of consultations with stakeholders. The advice explores the issue of how to deal with CRAs in a regulatory context within Europe. In particular, the report identifies whether there is a need for the introduction of some sort of recognition and/or regulation of rating agencies, as in general these are unregulated at present in Europe today.

In its main conclusions, regarding the development of appropriate rules of conduct, CESR advised the Commission that the IOSCO Code, published in December 2004, will improve the quality and integrity of the rating process and the transparency of CRAs' operations and reflects the message received from the responses to the consultation. As such, in CESR's view, the Code's implementation provided the right answer to the issues raised by the Commission's mandate and analysed throughout the paper.

In relation to the enforcement of the IOSCO Code, and more specifically in respect to the final question asked by the Commission's mandate: "does CESR consider it appropriate that Credit Rating Agencies should be registered in the EU?", CESR proposed two possible ways of handling this issue, narrowing down the four alternatives originally considered in its first consultation in November 2004. A clear majority of CESR Members supported a 'wait and see' approach, where no recognition system is set up for the time being, and the effects of the IOSCO Code are given time to work, as IOSCO and its members have committed to monitoring the implementation of the code. Recognising, nevertheless that, should self-regulation fail to deliver, there might be a need for statutory regulation. Overall, this approach was shared by respondents to the consultation. A distinct minority of CESR Members advocated an EU voluntary recognition system, along with a subsequent reporting on the compliance with the IOSCO code.

The paper itself also analysed a potential set of rules of conduct that might apply to rating agencies and the provisions of the IOSCO code in relation to the aspects studied. In particular, the paper considered the various potential conflicts of interests that might arise as well as the fair presentation and methodologies of rating agencies, staff requirements and the relationship between issuers and CRAs. In addition, an analysis of the use of ratings in private contracts and in European legislation was also provided.



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Finally, as regards to the competitive impact of regulating Credit Rating Agency activity in the EU, CESR was of the opinion that the impact of regulatory requirements was inconclusive. In particular, there was no clear evidence either way that any regulatory

requirement would either increase or decrease the entry barriers to the rating industry. Thus, CESR did not recommend the use of regulatory requirements as a measure to reduce, or remove, entry barriers to the market for credit rating.

### Next steps

*As discussed above, in its advice (Ref. CESR/05-139b) CESR proposed that the CRA industry should not be regulated for the time being at an EU level and, instead, proposed that a pragmatic approach should be adopted to keep under review the implementation by CRAs of the standards set out in the IOSCO Code of Conduct.*

*CESR therefore intends to develop this strategy on the basis of voluntary participation from CRAs. In addition, CESR will continue to monitor developments related to CRAs (in particular, the new rules provided by the Capital Requirements Directive) and issues impacting investors and issuers.*

*CESR is discussing with the rating agencies the process to review implementation of the IOSCO code and has outlined a voluntary framework of cooperation between CESR and CRAs.*

*In summary, this framework includes three elements: (i) an annual letter from each CRA will be sent to CESR, and will be made public, outlining how it has complied with the IOSCO Code and indicating any deviations from the Code; (ii) an annual meeting between CESR Members and the CRAs will also be organised to discuss any issues related to implementation of the IOSCO Code; and (iii) CRAs would provide an explanation to the national CESR Member should any substantial incident occur with a particular issuer in its market.*

*In order to flesh out the above points, CESR will continue its dialogue with the CRAs and will closely follow the development of guidelines for External Credit Assessment Institutions by CEBS. CESR expects that the framework outlined above will be fully in line with any decision the Commission might take in relation to CRAs.*

## 6.3 Mediation

### Chair's message

**Manuel Conthe, Chairman of the CNMV, Spain**

***“A non binding mediation between peers is an important step in achieving supervisory convergence and building an effective network amongst supervisors. The success of the Lamfalussy process depends on the ability of CESR Members to resolve potential areas of conflict in a constructive and efficient manner to ensure that market integration is not hampered and its market participants can continue to fully utilise the benefits of the single market in full confidence.”***



### Background

CESR was encouraged by the Inter-Institutional Monitoring Group (IIMG) to set up an internal mediation system under its Charter in order to solve conflicts between national securities regulators, and was asked by the European Securities Committee (ESC) to develop the practical functioning of a CESR mediation system in the course of its Level 3 work (Ref. ESC 38/2004).

CESR publicly announced in its 'Level 3 Action Plan for 2005' (Ref. CESR/04-527b) that it will develop a 'mediation mechanism' by peers when two competent authorities disagree or where regulators fail to cooperate. In the 'Himalaya Report', CESR presented its proposals for improvements of the CESR network, including the tool to enable more automatic mediation by CESR where there is a lack of cooperation in order to improve convergence at Level 3, as well as a mediation mechanism aimed at resolving conflicts of interpretations of Directives between Home/Host competent authorities as a means of advancing the fair implementation and application of Directives.

Market participants and other interested parties expressed support for broadening the scope of a CESR mediation mechanism beyond the one foreseen under the provisions of the Market Abuse Directive (MAD) in Article 16 paragraphs 2 and 4. In particular, as it was regarded as an efficient method for solving conflicts between competent authorities.

### Organisation and Work

CESR published a mandate and call for evidence (Ref. CESR/05-253) on 8 April 2005, announcing its first steps towards the development of a mediation mechanism to facilitate the rapid and effective solution to disputes between national supervisors.

CESR received 14 responses to this call for evidence, mostly from industry associations but also from some individual entities. As had already been the case in previous consultations of CESR, where the idea of a mediation mechanism was raised (e.g. Level 3 Action Plan, Himalaya Report), almost all respondents welcomed the establishment of such a mechanism. Many respondents asked CESR to design the mechanism in such a way that market participants could provide input into the mediation process and asked for transparency vis-à-vis the public on mediation cases. Only a few respondents were against the scope of mediation extending beyond the MAD. There was also general support that the outcome of mediation should not be binding.

In order to facilitate the development of the mechanism, an expert mediation advisory group consisting of both practising mediation experts and mediation academics was established. This group has provided invaluable input into the specific issues that have to be taken into account when making the final decisions about certain aspects of the mechanism that have to be catered for if the mechanism is to be put into practice.

### Mandate

#### Mandate of the Mediation Task Force

CESR has established a Task Force on Mediation, which is chaired by Mr Manuel Conthe, Chairman of the Spanish Securities Commission (Comisión Nacional del Mercado de Valores) and which is mandated to develop a proposal for a general CESR mediation mechanism. The Task Force is composed of members from 11 CESR Members, and the European Commission also participates. The work is supported by Geraldine Levy, Director at the CESR Secretariat. The objective of such a mediation mechanism is to facilitate the rapid, effective and balanced solution to disputes between CESR Members in order to facilitate convergence at Level 3 and the fair implementation and application of CESR measures and EU law. The mechanism will have to ensure that the competence of the Commission is fully respected, and it will not interfere with the respective roles of the Commission and the European Court of Justice in the interpretation and enforcement of EU law.

# Supervisory Convergence (Level 3)

## Mediation 6.3

### Call for evidence on the establishment of a Mediation Mechanism

Total number of responses : 14



The members of the consultative working group are:

*Ms Sandra Estanque, Mediarcom*

*Mr Jan Meyers, Cleary Gottlieb Steen & Hamilton*

*Ms Anke Sessler, Clifford Chance*

*Mr Jon Lang*

*Ms Marie Claude Robert*

*Mr Andre Prum, University of Luxembourg*

*Professor Jean-Jacques Daig, Université Paris 1 – Sorbonne*

### Underlying principles to which the mediation mechanism will need to conform

Following an initial consultation, it has been established that CESR's mediation mechanism will need to conform to some underlying principles. In particular, it should:

- Be a mechanism of peers (i.e. CESR Members) committed to ensuring the success of mediation;
- Ensure safeguards are put in place to ensure an unbiased process;
- Avoid any systematic questioning of the 'automaticity' of mutual recognition;
- Incorporate a process to identify suitable cases for mediation (including a system to receive complaints on cross-border cases) and act as a filter for those cases not appropriate for this mediation system;
- Find a way to enable input from market participants;
- Allow enough flexibility to cater for different purposes envisaged by the new FSAP Directives (e.g. Market Abuse Directive, MiFID, Prospectus Directive);

- Publish the outcomes in a manner that protects business confidentiality.

### Summary of CESR's proposals for a mediation mechanism.

Set out below is a summary of the main proposals of the CESR mediation mechanism, the details of which are set out in the Consultation paper (Ref. CESR/05-483c) which was published in September 2005.

### Scope

It is important to point out that the mediation mechanism cannot be regarded as a tool for providing interpretations of EU legislation, but as a tool to be used in the day-to-day application of CESR Level 3 measures and EU law in order to facilitate supervisory convergence between CESR Members at Level 3.

A basic categorisation of potential disputes, which follows a horizontal approach across the relevant CESR Level 3 measures and EU legislation, could potentially be:

- exchange of information and cooperation (e.g. investigation and consultation);
- enforcement of financial information (i.e. issues covered by the European Enforcers Coordination Sessions ['EECS']<sup>1</sup>);
- mutual recognition (e.g. notification under Prospectus Directive, UCITS Directive or MiFID), subject to certain considerations;
- other potential disputes or cases where agreement between competent authorities is required (e.g. determination of the competent authority of the most liquid market pursuant to Art. 25 par. 3 of the MiFID; or determination of the supervisory authority in case of simultaneous admission to trading of the offeree company's securities in relation to takeover bids pursuant to Art. 4 par. 2 (c) of the Takeover Bids Directive).

In addition, the consultation discusses a number of other issues that should be considered when determining the scope of the mediation mechanism, such as the initiation of legal proceedings at EU or national level, issues that have already been referred to CESR for work at Level 2 or Level 3, and the ability of non-CESR competent authorities of EEA Member States to opt into the CESR mediation system.

### Key features of the mechanism

The mediation mechanism is a voluntary non binding mechanism of peers through which disputes of a cross

1 - The EECS acts as a forum in which all EU National Enforcers, whether or not CESR Members, may exchange views and discuss experiences on enforcement, mainly on national ex-post and ex-ante decisions but also on general matters such as use of selection methods and enforcement methodology. In this regard, EECS could also help to highlight issues that need to be dealt with in the enforcement standard setting process to be carried out by CESR. The main functions of the EECS are to:

- Analyse and discuss decisions taken or to be taken by EU National Enforcers on the enforcement of financial information requirements to achieve harmonisation and coordination of future decisions.
- Identify issues which are not covered by financial reporting standards or which may be affected by conflicting interpretations for referral to standard setting or interpretive bodies such as IASB or IFRIC.
- Share and compare practical experiences in the field of enforcement on issues such as selection, risk assessment and enforcement methodology.
- Help identify and provide advice on enforcement issues that may require future CESR standards and guidelines.
- Advise CESR-Fin on public disclosure of information on selected decisions.
- Advise CESR-Fin on database management issues.

border nature between CESR Members can be resolved in an expeditious manner.

As this will be a mechanism between peers, CESR Members are to be the only participants in the mediation process itself, (as it is not to be turned into a complaints mechanism for market participants), although provision will be made for market participants to be able to bring potential matters to the attention of the relevant CESR Members, who will then decide what to do with the matter. However, mediation requests declined would be reported to CESR in order not to treat requests for mediation lightly.

It will be necessary to ensure that if the mediation mechanism identifies issues that are of wider concern, these should be dealt with properly by the appropriate CESR forum/mechanism (e.g. CESR-Pol, the European Enforcers Coordination Sessions).

### The key procedural principles of the CESR mediation mechanism are speed, efficiency, fairness and confidentiality.

Taking the above principles into consideration, the proposed mechanism needs to be as flexible as possible. It is proposed that both a facilitative approach to mediation (where a third party is used to mediate between the parties) and an evaluative approach to mediation (where a panel of CESR Members will make a decision on the matter), should be catered for.

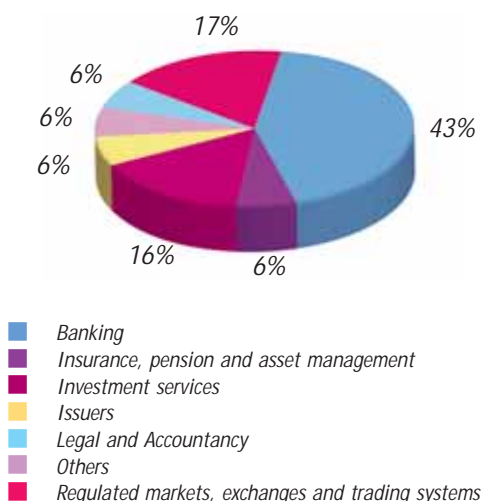
The proposed mechanism will also establish a so-called 'gatekeeper' to whom a case for mediation will be referred to by CESR Members. The role of the gatekeeper will be to assess the merits of escalating the matter to mediation (using a set of criteria), and to facilitate the process by appointing the appropriate mediator or panellists from the CESR membership. The nature of the mediator or panellist chosen will depend on the nature of the case in question.

All CESR Members and the Commission will be informed about the outcome of the issues having been mediated in anonymous form, respecting the confidentiality and professional secrecy obligations under EU law.

## Consultation

The consultation on CESR's draft proposal for a Mediation Mechanism (Ref. CESR 05-483c) ended on 30 November 2005. There were 18 responses to this consultation and the respondents came from all sectors: eight from the banking sector, three from regulated markets/exchanges, three from investment services, one from legal/accountancy and one from others. As was the case during the call for evidence, there was wide support for the creation of a mediation mechanism. In general, the respondents supported the voluntary and confidential nature of the mechanism safeguarding the rights of the European institutions. The majority of respondents supported a mediation mechanism also outside the boundaries of the Market Abuse Directive. Some respondents were of the opinion that market participants should be able to initiate a mediation procedure.

Consultation on the establishment of a Mediation Mechanism  
Total number of responses : 18



### Next steps

CESR is in the process of finalising its proposals following the close of the consultation in November, and will publish a Feedback Statement during the first half of 2006. CESR anticipates having the mediation mechanism up and running during the second half of 2006.



# Supervisory Convergence (Level 3)

## Operational Groups 6.4



### 6.4 Operational groups

#### 6.4.1 CESR-Fin: Enforcement of Financial information disclosed by listed companies in the EU

##### *Chair's message*

**John Tiner, Chief Executive of the FSA, UK**

*"Since January 2005 we have seen International Accounting Standards (IAS/IFRS) adopted for all EU listed groups - the most radical and important change in financial accounting since the introduction of the 4th and 7th Company Law Directives. With the introduction of IFRS in Europe, the vision under the Financial Services Action Plan of a single set of financial statements for listed companies is now becoming a reality, the primary objective being to allow community companies to compete on an equal footing for financial resources available in the capital markets. In this context, the next two years will be crucial as IAS/IFRS are applicable to nearly 8,000 listed group companies across the EU.*

*CESR was closely associated to the process that led to the introduction of the standards in the EU, notably through its monitoring work on the development and adoption of the EU standards, or with the publication of additional recommendations accompanying the transition to IFRS, but also with the advice given in June 2005 to the European Commission on the equivalence between certain third country GAAP and IFRS. Now that we are starting to see IFRS information and the process becomes more real, we must move on to think about consistency of application and interpretation. CESR-Fin has already taken the initiative to help with the development of robust and coordinated enforcement across the EU by establishing a framework for discussion and information sharing among European enforcement agencies. It is in everyone's interests for the standards to be applied, interpreted and enforced consistently in all major capital markets, and for investors to have confidence in financial information from listed companies.*

*In this context, the coordination of enforcement activities and consolidation of our relationship with third-countries enforcement agencies will be high on the agenda of CESR-Fin for the near future. Alongside this aspect, CESR-Fin will continue to oversee important changes still expected, both as regards the financial reporting standards and in relation to auditing issues."*

##### **Mandate**

###### **Mandate of CESR-Fin**

CESR-Fin is a permanent Operational Group with the role of co-ordinating the work of CESR Members in the area of financial reporting standards in Europe. CESR-Fin enables CESR to play an effective role in the implementation and enforcement of IAS/IFRS in the European Union (EU) in the context of the EU's new accounting framework that is compulsory for all European listed companies, since 2005. This allows CESR to participate pro-actively through an engaged dialogue with all the key policy makers involved throughout the European endorsement process, during the formation and implementation of the international accounting standards (IAS/IFRS). Furthermore, CESR-Fin's role is to assist CESR Members in delivering a co-ordinated and effective application of IAS/IFRS by EU listed companies, through the preparation of standards and guidelines on supervision and enforcement of financial reporting in Europe. CESR-Fin has also been tasked with monitoring developments in Europe in the field of auditing.

CESR-Fin is chaired by John Tiner, Chief Executive of the UK FSA, and supported by Michel Colinet, Director of Financial Information at the CESR Secretariat.

In 2005, CESR-Fin devoted a large part of its attention to two major projects. One of these projects is the implementation of the coordination mechanism as envisaged in CESR Standard No 2 on enforcement of financial information. This included the organisation of the first meetings of enforcers to review practical issues and cases related to financial reporting, and the creation of a CESR database of enforcement decisions in this area. The second important project is the preparation and finalisation of CESR's advice on equivalence of certain third country GAAP with IFRS. Beside these major projects, CESR-Fin continued to monitor the EU process for endorsement of IFRS and prepared a consultation paper on Alternative Performance Measures. In the area of audit, CESR-Fin focused its attention on the developments related to the adoption of the 8th Directive and on practical audit issues raised by the implementation of new EU Directives.

##### **CESR-Fin activities in the area of enforcement of compliance with International Financial Reporting Standards**

The Prospectus and Transparency Directives have introduced considerable changes to the European institutional landscape in the area of financial report-



ing, by requiring each Member State to designate a competent administrative authority responsible for the supervision of financial information given to financial markets through prospectuses or on a periodic basis. The transposition of these two Directives into national law is in progress (see separate sections of this Report) and this will result in the existence of mechanisms in all European countries with the objective and legal responsibility to monitor compliance of financial reporting to markets within a reporting framework, i.e. IFRS in most common situations.

This new institutional framework was anticipated by CESR in its Standard No 1<sup>1</sup> whose national implementation is now under review by CESR's Review Panel. The CESR Standard No 2 dealt with a complementary element which relates to the coordination among European enforcers, thereby completing the framework and fostering consistency in day-to-day regulatory work.

As an operational group, CESR-Fin views the effective coordination of enforcement activities of CESR members and other EU national enforcers in the area of financial reporting as an essential mechanism which will contribute to ensuring proper and consistent application of IFRS in the EU.

To this end, the coordination mechanism set out in CESR's Standard No 2 on Enforcement of Financial Information has been implemented during the course of 2005. In particular, this has been carried out through the European Enforcers Coordination Session (EECS). The EECS started its activities in January 2005, and has so far held seven meetings fully devoted to the discussion of practical and technical issues or cases of financial reporting that emerged from the day-to-day practice of supervision of financial

information in each jurisdiction. These meetings represent an important step forward in ensuring convergence in application and provide an efficient means for senior accounting and financial reporting experts to exchange views and experiences. This co-ordination is particularly critical given that we are in the first stages of implementing IFRS in Europe.

In parallel, CESR has completed its IT project to create a database of enforcement decisions taken by CESR Members and other delegated authorities in relation to financial reporting. The database became operational on 25 August 2005, and should provide a useful source of information for EECS members who are committed to considering the existing decisions of other enforcers before adopting new decisions. Decisions will be input into the database gradually but particularly from 2006 onwards, as national enforcers progress with the review of financial statements published under IFRS.

CESR-Fin has closely collaborated in the discussions led by the European Commission within the Accounting Regulatory Committee (ARC) for the creation of a Temporary Roundtable expected to act as a informal forum of European accounting experts for identifying at an early stage emerging and potentially problematic accounting issues that need to be addressed by IASB/IFRIC. CESR has been invited to participate in this Roundtable which is expected to complete the European infrastructure already in place (notably through the CESR/EECS), contributing to fostering consistent application of IFRS in the EU.

#### Next steps

*Considering the importance in the EU context, the continuation of the EECS meetings and the effective use and development of the database will remain high on the agenda of CESR-Fin over the next months and years. Other aspects, such as establishing appropriate communication flows between the coordination mechanism of CESR and external players (in, and outside, Europe) in the area of financial information will also receive due attention.*

## CESR-Fin: Equivalence of certain third country's GAAP and IFRS/IAS

### Mandate

#### **Mandate on equivalence between US, Canadian and Japanese GAAP and IFRS/IAS, and for a description of enforcement mechanisms in these countries**

On 29 June 2004, CESR received a mandate from the European Commission (Ref. CESR/04-305) which requested CESR to provide technical advice on the equivalence between Canadian, Japanese and US GAAP (Generally Accepted Accounting Principles) respectively, and IFRS. The mandate also asked CESR to describe the enforcement mechanisms in place in Canada, Japan and the USA for enforcement of financial information.

This mandate was related to the requirements regarding financial reporting by third country issuers from Canada, Japan and USA established by the Prospectus and Transparency Directive.

CESR-Fin was given responsibility within CESR to complete the mandate from the Commission. More specifically, the technical assessment of equivalence of accounting standards has been prepared by the subcommittee on endorsement of CESR-Fin (SISE) which is chaired by Paul Koster, Commissioner at the Dutch AFM. The enforcement aspects have been addressed by the subcommittee on enforcement of CESR-Fin (SCE), which is chaired by Lars Østergaard, Director at the Danish FSA. The two subcommittees were supported by Michel Colinet, Director at the CESR Secretariat.

1 - CESR Standard No 1 on Enforcement of Financial Information and Standard No 2 on Enforcement of Financial Information – Co-ordination of Enforcement activities (Ref. CESR/03-317c) and Guidance for Implementation of Co-ordination of Enforcement of Financial Information (Ref. CESR/04-257b).

# Supervisory Convergence (Level 3)

## Operational Groups 6.4

CESR submitted to the European Commission its final technical advice on Equivalence between Canadian, Japanese and US General Accepted Accounting Practices (GAAP) and International Financial Reporting Standards (IFRS) (Ref. CESR/05-230b), and a feedback statement (Ref. CESR/05-395) of the consultations conducted by CESR on this project, on 30 June 2005.

*Draft technical advice on equivalence of certain third country GAAP and on description of certain third countries mechanisms of enforcement of final information*  
Total number of responses: 29



Having received generally supportive comments during the public consultation on CESR's overall assessment of equivalence, CESR has confirmed the premise of its initial technical assessment of equivalence, and the conclusion that having taken into account the needs of investors on EU financial markets, the three third countries' GAAP, each taken as a whole, could be considered as equivalent to IFRS subject to a number of remedies (essentially disclosures).

The final advice also provides a number of practical indications in relation to the way in which companies reporting under these GAAP standards would be expected to provide EU financial markets with additional information (remedies) for a number of technical differences between third country GAAP and IFRS that, as indicated in the advice, can be considered as significant. In order to address particular concerns expressed by respondents, CESR's final advice, following consultation, has been revised to provide several clarifications on these practical indications.

A key element of CESR's conclusion is that companies reporting under Canadian, Japanese and US GAAP are not expected, under any circumstances, to do a complete reconciliation of their financial statement into IFRS. Rather, they are expected to apply remedies

primarily (in the form of disclosures), in relation to the list of significant differences provided in the advice. Taking account of comments received, the final advice has streamlined the approach to situations where an accounting issue is not included in this list of significant GAAP differences. Under the final advice, the scope of application where these situations might arise has also been limited. In particular, the situations are expected to be exceptional in occurrence and, when they occur, should be covered by additional disclosures when related to transactions or events that could be material and relevant to investors' decisions.

It should be noted that any exercise of GAAP comparisons is subject to adaptation over time as it represents an assessment of the standards at a given moment. As such, the assessment of equivalence was based on the standards in place in the third countries up to 1 January 2005 (as requested by the Commission). Throughout the finalisation of this work, CESR has collected evidence that important changes will occur in third countries GAAP, that will solve many of the differences highlighted in the advice. These are largely the result of the convergence projects that are underway between the IASB and the standard setters in the three countries considered. Convergence towards adoption of high quality international reporting standards is essential to foster the integration and efficiency of global capital markets and CESR is hopeful that these projects will be taken forward as a matter of priority over the next few months and years.

As requested by the Commission, CESR also included within the technical advice, a description of the enforcement mechanisms which are in place in each country. This description is essentially based on the information received from Canada, Japan and the US and is not an assessment of how enforcement works in practice. Effective enforcement mechanisms of financial information however, are a key element in establishing an appropriate framework, within which investment decisions can be taken in a secure environment, and are therefore critical to maintain investor confidence.

A Consultative Working Group (CWG) composed of senior experts in the area of accounting and financial information was established in the framework of this mandate. The members of the CWG are:

Mr Antoni F. Reczek, PwC  
Mr Freddy Méan, Petrofina  
Ms Lynda Tomkins, Ernst & Young  
Mr Per Thorell, Ernst & Young  
Mr Peter Sampers, Philipps International B. V.  
Dr Dieter Silbernagel, Allianz Lebensversicherungs AG  
Mr Harald Petersen, Schutzgemeinschaft der Kapitalanleger e.V.  
Mr Laurent Decaen, Deloitte  
Ms Sue Harding, Standard & Poor's

Mr Frederick Mifsud Bonnici, PwC  
 Mr Mark Merson, Barclays Bank PLC  
 Mr Ralph Ter Hoeven, Deloitte  
 Mr Jan Buisman, PwC

Mr Olivier Azieres, Deloitte  
 Mr Stephane Lagut, Ernst&Young  
 Ms Paula Presta, KPMG  
 Ms Conie Tang, KPMG

### Next steps

*CESR will continue to oversee future developments regarding equivalence requirements as they will be discussed in European Regulatory Committees (European Securities Committee and Accounting Regulatory Committee), on the basis of initiatives emanating from the European Commission in light of CESR's technical advice.*

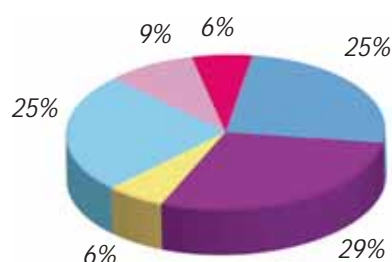
*CESR took note of the messages given by Chairman Cox of the US SEC in February 2005, which acknowledged the role of CESR with regards to the implementation of IFRS in the European Union, and stressed the need for enhancing cooperation and information-sharing among regulators. CESR considers these elements as very important and the follow-up will constitute a priority for CESR-Fin in 2006.*

## CESR's Recommendation on Alternative Performance Measures and CESR-Fin's endorsement activities

Following consultation, CESR published on 3 November 2005, its final Recommendations on the use by listed firms of Alternative Performance Measures (Ref. CESR/05-178B) and a feedback statement (Ref. CESR/05-548) which indicates how the points raised by the respondents during the consultation were handled. This Recommendation was prepared by CESR-Fin's Sub-Committee on International Standards Endorsement.

European listed companies use widely differing alternative performance measures. Alternative Performance Measures can provide investors with appropriate additional information. Properly used and presented, these measures can assist investors in gaining a better understanding of a company's financial performance. The objective of this recommendation was therefore intended to provide guidance for listed companies to ensure that the information they provide investors is not misleading.

*Consultation on CESR's recommendations  
 for Alternative Performance Measures  
 Total number of responses: 32*



- Banking
- Insurance, pension and asset management
- Issuers
- Legal and Accountancy
- Others
- Regulated markets, exchanges and trading systems

The Recommendation draws heavily on the experience of CESR Members in the supervision and enforcement of financial reporting on financial markets and seeks to address in a forward looking manner, the likelihood of the adoption of IFRS in Europe increasing the use of Alternative Performance Measures in the future.

CESR began a three-month consultation on this Recommendation on 11 May 2005. The 32 responses to the consultation were very supportive of CESR's initiative to issue a Recommendation in this area and, of the Recommendations themselves. Responses highlighted a number of issues which were clarified in the final version of CESR's Recommendation (Ref. CESR/05-178b) and reflected in the feedback statement (Ref. CESR/05-548).

CESR-Fin continued to oversee the developments taking place in 2005 regarding new or amended financial reporting standards. The Committee considered the Exposure Draft (ED) published by the IASB, which set out proposed amendments to standards in relation to Business Combinations, as part of a project to converge with US GAAP.

# Supervisory Convergence (Level 3)

## Operational Groups 6.4

CESR-Fin expressed its concerns that the amendments envisaged by the IASB went beyond what is necessary to achieve the objective of convergence with US GAAP and tended to introduce important and controversial technical changes without addressing some fundamental issues identified in CESR's advice on equivalence (e.g. consolidation of SPEs). The bigger issue that underlies this, is the difficulty to strike an appropriate balance between the objective of convergence with US GAAP, and the need for some stability in the accounting framework in the EU, in particular during this difficult period of transition to IFRS. CESR-Fin considers that this issue is important, and will continue to monitor developments. Nevertheless, the debate is broader and also appears on the IASB agenda. CESR is therefore of the view that it is important that the IASB (and the Interpretation Committee of the IASB, IFRIC) deals firstly with those issues that regulators and others have identified

as of immediate practical importance, rather than those that perhaps might be considered to pose the most exciting intellectual challenge.

CESR-Fin also monitored the discussions in relation to audit matters; in particular, those which led to the approval by the European Parliament on 28 September, 2005 of various amendments to the 8th Company Law Directive (the Auditing Directive). The amendments will establish (i) a system for public oversight of the auditing profession and for cooperation between Member States authorities; (ii) require application of International Standards on Auditing (ISAs) in European auditing, and (iii) require rotation, every seven years, of the key audit partner/statutory auditor (compulsory rotation of audit firms is not adopted). CESR-Fin is undertaking a survey on the role of securities regulators in Auditor Oversight and on their relationship with auditors of public listed companies.

### Next steps

*On 13 January 2006, CESR issued a public statement reminding issuers and investors about the importance of clear and transparent disclosure on the use of any options made available by applicable financial reporting standards in the EU. CESR-Fin plans to continue in 2006 its monitoring activities in relation both to accounting standards and to the framework regulating the auditors' work. On this basis, comment letters (e.g. to EFRAG and IASB) and other communications with relevant stakeholders in this area will continue to take place.*



## 6.4.2 CESR-Pol

### Chair's message

**Kurt Pribil, Executive Director of the FMA, Austria.**

*"CESR-Pol, which I have had the pleasure to chair for two years now, and am proud to have the opportunity of another term of two years, has seen big challenges in 2005. CESR-Pol has become more operational in character and is striving further in this direction. It revised its organisation in 2005 and established operational working groups to promote closer cooperation and to ensure the consistent and effective application of key EU Directives, particularly the Market Abuse Directive. It set up a permanent sub-group, the Surveillance & Intelligence Group, providing experts in the investigation and enforcement of market abuse with a forum for sharing their experiences on the basis of individual cases and exchanging valuable information on methods and procedures used in day-to-day supervision.*

*In addition, CESR-Pol established the framework for Urgent Issues Groups to be formed as part of a mechanism designed in the course of Level 3 work on the Market Abuse Directive. These Urgent Issues Groups allow the respective CESR-Pol Members to co-ordinate and jointly conduct investigations in urgent cases. The first Urgent Issues Group had to be set up sooner than expected. Overall, a total of three ad hoc Urgent Issues Groups were established in 2005, whose work was very successful.*

*As already indicated, 2005 was also a year of developing further the Level 3 work on the Market Abuse Directive. The most prominent result of this work was the publication of CESR Guidance on Accepted Market Practices (AMPs), following consultation with market participants who welcomed this Guidance.*

*I am very pleased with the level of cooperation of the CESR-Pol experts. Together we have shouldered the project of working towards a common approach to the application of the European market abuse regime. We have gained an in-depth insight into the supervisory approaches of our peers and achieved a level of common understanding with the aim of ensuring the integrity of our markets."*



### Mandate

#### Mandate of CESR-Pol

CESR-Pol is a permanent operational group within CESR. It is made up of senior officials from each CESR Member, who are responsible for the surveillance of securities activities and the exchange of information. CESR-Pol's purpose is to facilitate effective, efficient and pro-active sharing of information, in order to enhance cooperation upon, and the co-ordination of, surveillance and enforcement activities between CESR Members. CESR-Pol's key objective is to make information flow across borders between CESR Members as rapidly as it would be internally and, by so doing, to enhance the transparency, the fairness and the integrity of European markets as a whole. The ability of CESR-Pol Members to co-operate in the field of enforcement has been established by their signature of the CESR multilateral Memorandum of Understanding on the Exchange of Information and Surveillance of Securities Activities (MoU) which was endorsed in January 1999.

Kurt Pribil, Chief Executive Officer of the Austrian Financial Market Authority (FMA) was appointed Chairman of CESR-Pol in September 2003. The work of CESR-Pol and the Surveillance & Intelligence Group is supported by a member of the CESR secretariat, Angie Reeh-Schild.

### Work done

One of CESR-Pol's key priorities in 2005 has been to achieve greater convergence in the application of the Market Abuse Directive at Level 3 of the Lamfalussy process and to foster greater cooperation in deterring and taking action against market abuse.

### The Market Abuse Directive

#### Market facing issues

The Market Abuse Directive (MAD) came into effect on 12 October 2004, and while some delays in the transposition of this legislation into national law was anticipated, CESR nevertheless took steps to prepare the ground for the implementation of the new regime by embarking on a common approach to the operation of the Directive by supervisors throughout the EU.

CESR's operational group, CESR-Pol, which draws together enforcement and cooperation officers from all CESR Members, has been given



# Supervisory Convergence (Level 3)

## Operational Groups 6.4

responsibility for ensuring the effective implementation of the Directive. On 11 May 2005, CESR published guidance destined to facilitate the implementation of the MAD (Ref. CESR/04-505b), accompanied by a Feedback Statement (Ref. CESR/05-274), that was prepared by CESR-Pol providing:

- guidance on accepted market practices in relation to market manipulation;
- guidance on what CESR Members consider constitutes market manipulation;
- guidance and a common format for reporting suspicious transactions.

In the event of a person manipulating a market, the Directive provides a defence if the transaction was legitimate and in accordance with market practices accepted by the competent authority – these are often referred to as ‘Accepted Market Practices’ (AMPs). The guidance re-emphasises that the decision to accept a practice as an AMP applies only to the practice in question in relation to a specific national market. This reflects the fact that the characteristics of each market may differ and as such, it may well be appropriate for one market but inappropriate for another where the conditions (such as the market size etc.) differ. In accordance with the obligations set out in the Directive, CESR published on its website during May 2005, the first AMP under the MAD regime (concerning practices accepted by the competent authorities of Austria (Ref. CESR/AMP Austria), France (Ref. CESR/AMP France) and the United Kingdom (Ref. CESR/AMP UK). The specific AMPs are published including a short description and an explanation of the rationale for the acceptance plus a link to the national legislation or rules where the AMP has been adopted.

In the second part of the paper, CESR identifies types of market manipulation which have occurred in recent years and which, in the view of CESR members, would breach the prohibitions on market manipulation contained in the Directive. The examples of types of practice set out in the paper are deliberately described in non-legal technical terms and it is emphasised that the descriptions are not intended to affect the scope of interpretation of the Directive.

An innovation of the new European Market Abuse regime is that the Directive places an obligation on market participants to report suspicious transactions. This paper offers guidance as to what might be the indications of suspicious transactions which may involve insider dealing or market manipulation.

The implementing measures of the MAD (2004/72/EC under Article 8) places a duty on firms ‘to notify without delay’ if they have reasonable doubts regarding a transaction executed or arranged by the firm itself. For this purpose, CESR’s guidance sets out a standard reporting format which should be used by market players to report suspicious transactions to the relevant

competent authority. The common notification form was generally felt to be useful. Nevertheless, a number of respondents to the consultation paper (Ref. CESR/04-505) suggested that CESR should ensure that the use of a form does not result in a delay in notification, particularly, in circumstances where the firm lacks information to complete the form in its entirety. In addition, some respondents asked CESR to set a specific timeframe within which they would be considered to have complied with the requirement that they had notified ‘without delay’.

CESR agreed that it would be beneficial to report a suspicious transaction even if the reporting form was initially incomplete due to a lack of information and has amended the guidance to reflect this. However, CESR has decided against setting a timeframe within which the firm could be considered to have ‘notified without delay’. The reason for this being that situations may differ considerably, making it impossible to be too prescriptive in this regard. For example, a transaction which takes place on 20 June might only become suspicious (with retroactive monitoring) on 20 July. A notification on 20 July therefore, would still, in this case, constitute timely notification.

### Cooperation and enforcement issues

CESR-Pol continued to work on developing the framework on supervisory and enforcement cooperation which will be equally important in ensuring that the MAD successfully produces its objectives.

In cases of specific investigations, the CESR-Pol network cooperates to facilitate the work of the responsible authority by conducting joint investigations on bilateral and multilateral level.

Joint investigations are generally conducted according to the paper on Requests to Open an Investigation and Joint Investigations that was agreed amongst CESR members in June 2005. This paper provides flexible guidelines for the procedures to be followed with regard to (a) requests by a competent authority of a Member State to the competent authority of another Member State to open an investigation on the former’s behalf, and (b) joint investigations between competent authorities of Member States.

In January 2005 CESR approved a paper outlining the organisational provisions and the scope of Urgent Issues Groups. The objective of the Urgent Issues Groups mechanism is to ensure rapid regulatory responses to potential and actual threats to the single market. To date CESR-Pol has established three Urgent Issues Groups to jointly investigate into suspected irregular market activities with cross-border relevance. The excellent cooperation on investigations within these groups has to be noted. When it came to taking action, however, the differences in applicable laws and processes in the different jurisdictions exposed the collective weaknesses in an ability to take joint action.

As a consequence, CESR-Pol conducted a mapping exercise among its Members to get a clear picture of the powers and sanctions available to CESR Members within their jurisdictions. The full implementation of MAD in all Member States will bring more convergence but not identical powers to the fullest extent. This underlines the necessity to conduct a second review of powers of the CESR Members after full implementation. Further coordination within CESR/CESR-Pol to achieve a common approach so as to develop common solutions and approaches to achieve consistent and convergent treatment of comparable cases will be necessary.

Furthermore, CESR-Pol has conducted work on the Categorisation of Information that has to be exchanged in accordance with the MAD. The information to be exchanged among competent authorities falls into three categories (automatic information; information that has to be exchanged in consultation procedures; and information to be exchanged upon request) in respect of which CESR-Pol has developed different service levels for the exchange of information. One of the most relevant cases for consultation foreseen in the MAD is the process to consult publicly before accepting Market Practices under the MAD regime and the paper lays down the procedure the authorities should follow if they consider a consultation with some or all CESR Members necessary.

CESR-Pol also developed a MAD Level 3 Mediation Mechanism to solve disputes among CESR Members concerning the cooperation under the Directive. Under article 16 of the MAD, a competent authority whose request for information or other assistance is not acted upon within a reasonable time or whose request for information or other assistance is rejected may bring that non-compliance to the attention of CESR, where discussion will take place in order to reach a rapid and effective solution. The Directive provides that such discussions will be without prejudice to action that the Commission may take against a member state under Article 226 of the Treaty to ensure compliance with EU law. While the Directive does not specifically call for the use of a mediation mechanism to facilitate such discussions, this is the approach that has been favoured by CESR. This approach accords with the views of the Inter-Institutional Monitoring Group (IIMG) on the Lamfalussy process which has advocated that a mediation process should be set up to resolve conflicts between national regulators. The general CESR Mediation Mechanism (Ref. CESR/05-483) and the MAD Mediation Mechanism therefore supplement each other, as the latter procedure serves the specific needs of the mediation of market abuse matters.

#### MiFID Level 3 work on Cooperation

At the meeting in June 2005, CESR approved the Level 3 Mandate related to cooperation under MiFID to CESR-Pol. It was confirmed that CESR-Pol should work on issues relating to cooperation on Level 3, whereas those areas concerning the technical aspects

of transaction reporting would be better addressed by a MiFID Expert Group of Reporting and IT systems experts.

Therefore, with a view to promoting effective cooperation and making the exchange of information operational, CESR-Pol would draft the relevant guidance for Article 58 and identify further areas that may merit further guidance. In particular work on Articles 56 and 57 may come into question in this context. However, it has to be recognised that any guidance on cooperation cannot be considered prior to concrete statements on the scope of Level 2 and Level 3. CESR-Pol will therefore await material decisions from the European Commission regarding Level 2 implementing measures prior to agreeing on any work programme. CESR-Pol will co-ordinate its work with other CESR groups working on Level 3 of MiFID.

#### Revised Operational Structure

In October 2005, CESR-Pol revised its organisation to achieve a more operational structure. The concept foresees retaining the CESR-Pol plenary as the core group which will remain the forum for policy discussion relating to cooperation and enforcement issues generally. However, to ensure greater operational focus, a permanent working group on Surveillance and Intelligence (S&I group) was established to foster simultaneous and comprehensive intelligence sharing and discussion of practical issues of concern arising in relation to day-to-day supervision of firms and markets, as well as sharing of intelligence on both regulated and unauthorised activities and any particular themes of practical significance. Discussions will aim at being both contemporaneous and comprehensive to derive the maximum benefits of cooperation and coordination.

At the first meeting of the S&I group, chaired by Regina Schierhorn, the Head of the Investigation of Market Manipulation Division at the BaFin, in Paris November 2005, experts in the field of market surveillance from 16 CESR-Pol Members convened for comprehensive discussions. The S&I group developed a work programme for 2006 on the basis of the key elements that are outlined in the Revised Operational Structure paper:

- a. Experiences with types of market abuse and possible consequences, i.e. insider dealing rings and market abuse in shares with low liquidity was given high priority;
- b. Sharing information on working methods, e.g. on new investigation techniques or information sources;
- c. Issues of common concern, i.e. the handling of disclosure duties of market participants in order to profit from the safe harbours provided by EU-Regulation 2273/2003 will be dealt with;
- d. Discussion of cross border cases in order to alert other Members of important developments on the markets; and

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- e. Information on public guidance/guidelines issued in Member States.

### Published warning notes

During 2005, members of CESR drew extensively on the CESR-Pol network to inform other CESR Members of unauthorised offers of financial services by investment firms or individuals who were un-licensed to do so. CESR-Pol regularly circulates warning notes of unauthorised activities published by CESR Members to all other CESR Members. Recently it was agreed to circulate these warnings alerts with members of the Level 3 Committee of European Banking Supervisors (CEBS), in order to spread such warnings as far as possible. This allows identification of those illegitimately providing investment services by the same provider in multiple jurisdictions in a quick and efficient manner and enables CESR-Pol to intensify cooperation and to identify where it might be appropriate to act in a joint manner. Equally, this warning mechanism provides CESR Members with a valuable tool to alert potential investors in their jurisdiction

in a timely manner, therefore minimising the risk of consumers being defrauded.

### Work with non-EU jurisdictions

The contact with IOSCO to encourage cooperation with regard to work on uncooperative jurisdictions and to avoid any duplication of resources has been intensified. Megan Butler, Chair of IOSCO Standing Committee 4 (Enforcement and the Exchange of Information) attended the CESR-Pol meeting in Athens in September 2005 to discuss the possibility of collaboration. Furthermore, CESR-Pol has continued its dialogue with Liechtenstein. After a presentation of high level representatives of the Finanzmarktaufsicht of Liechtenstein (FMA LIE) of the regulatory system of the Principality at the CESR-Pol meeting in Vienna in June 2005, a small CESR-Pol delegation comprising members from Ireland, Italy and the CESR-Pol secretary, visited the FMA in Liechtenstein in July 2005, for an in-depth discussion on the legal environment and provided assistance for the implementation of the MAD in Liechtenstein.

### Next steps

*CESR-Pol will continue to work on ensuring the effective and consistent implementation of the Market Abuse Directive. The experience the Members gained so far in the day-to-day working with the provisions of the Directive clearly shows that several issues need further attention. On the basis of the mandate given by CESR to CESR-Pol concerning Level 3 of the Market Abuse Directive CESR-Pol will undertake the latest phase of the market-facing work. CESR-Pol's work programme sets out the aspects of market abuse where CESR-Pol will seek, where necessary, to develop a common understanding amongst its Members in order to achieve convergent application of the Market Abuse Directive, these include the following:*

1. What constitutes "inside information" under the Directive and when does information become "inside information";
2. When are there legitimate reasons to delay the publication of insider information;
3. Insider dealing issues in connection with book building and pre-marketing of issues of securities;
4. Large client orders – when do they become insider information in the context of Article 1 (1) par 3 of Directive 2003/6/EC;
5. Low liquidity markets (order books) – what are the criteria which determine when the market for a particular security falls shall be considered as a low liquidity market (Article 5 (3) of Commission Regulation n° 2273/2003);
6. Guidance on application of insider lists relating to the following circumstances:
  - a. in cases where an issuer is admitted to trading on two regulated markets with a primary listing on each, which country's rules concerning the keeping of insider lists does the issuer have to follow;
  - b. in cases where an issuer in one Member State has a person acting on their behalf or for their account located in another Member State, which country's rules concerning the keeping of insider lists does that person have to follow.

*The aim in each case will be to see whether guidelines for CESR Members, and guidance to the market, can be produced which will add value to the definitions and descriptions contained in the Level 1 and 2 Directives/Regulations and accompanying recitals. Any guidance that shall be released to the market will be published in draft form for a full and public consultation.*

*Furthermore, CESR-Pol was recently mandated to conduct work on the convergent implementation of the MIFID in particular in relation to the cooperation among EU regulators in areas that fall within the scope of CESR-Pol's remit.*

*CESR-Pol will continue its dialogue and collaboration on uncooperative jurisdictions with other bodies that are affected by cooperation difficulties in a similar sense, in order to exchange views and experiences. It will also go on to undertake bi- and multi-lateral efforts towards jurisdictions that are problematic in that respect with the goal to foster common understanding of the need to closely cooperate and to improve the respective legal abilities and willingness of such jurisdictions.*

*CESR-Pol will also share its experiences regarding the enforcement of combined futures/cash transactions on bond markets with the US Commodities and Futures Trading Commission (CFTC).*

### Statistics of meetings in 2005

CESR-Pol met four times during 2005 and continues to work on a virtual basis i.e. electronically. In addition to that the Surveillance & Intelligence group, the Urgent Issues Groups and drafting groups met separately.



## 6.5 Level 3 Expert Groups

### 6.5.1 Clearing and Settlement

#### Co-Chair's Message

**Eddy Wymeersch, Chairman of the CBFA, Belgium.**

*"In 2005, the Joint CESR/ESCB Working Group on clearing & settlement continued working on the follow-up issues identified in the process of standard-setting in 2004. These follow-up issues include: the development of an assessment methodology as a tool for the authorities to check future compliance with the standards, alignment of the guidance for central counterparties with the CPSS/IOSCO recommendations in this area and the elaboration of a number of technical issues in the area of securities settlement."*

*During the course of the year, the European Commission envisaged to finalise its impact assessment in the area of clearing & settlement before the end of the year as a basis for deciding whether there is a case to take any regulatory action at EU-level in this field. Awaiting the Commission's position and given the need to align the CESR/ESCB-initiative with this announcement, it had been decided by CESR and the ESCB in Autumn of 2005 to put the activities of the Joint Working Group on hold until further notice is given. Both CESR and the ESCB, however, remain committed to the objectives formulated for this area in 2004."*

#### Mandate

##### Mandate of the CESR/ESCB joint working group

After the publication of the CESR/ESCB "Standards for Securities Clearing and Settlement in the EU" in October 2004, the Joint Working Group received the mandate from CESR/ESCB to work on three strands of follow-up work, as indicated below and as announced in the introduction of the aforementioned Standards. A call for evidence on the follow-up work by CESR and the ESCB was published on 1 August 2005 (Ref. CESR/05-502). During the course of this work - given the nature, scope and complexity of this follow-up work - CESR/ESCB will closely link its work with the relevant political and other regulatory stakeholders, in particular the three EU-institutions (Commission, Parliament and Council), CEBS and the BSC.

On 7 July 2005, the European Parliament adopted a Resolution on clearing and settlement, welcoming the work process established by the European Commission through the CESAME group and supporting the goal of an efficient, integrated and safe market for clearing and settlement. CESR is represented in CESAME by Mr Eddy Wymeersch, the chairman of the Belgian Commission Bancaire, Financière et des Assurances (CBFA) and co-chairman of the Joint Working Group on Clearing and Settlement.

The Parliament also expressed priorities on the way in which future work in this area should be conducted. In particular, the Parliament invited CESR and the ESCB to work in a very open manner, to reconsider the concept of "custodian bank" and to avoid duplicating supervision of institutions already subject to banking supervision. Finally, the Parliament asked that the timing of the implementation of the CESR/ESCB standards should be coordinated with the agenda of the European Commission in this area.

#### Development of assessment methodology

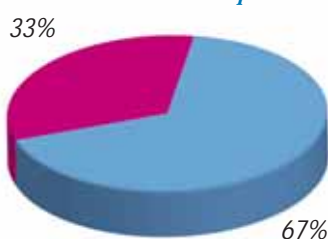
CESR will take the utmost account of the opinions expressed by the Parliament in its resolution when finalising the assessment methodology of the standards. The development of an "Assessment methodology" will provide guidance to help assess whether the addressees of the standards have implemented the standards or, where necessary, developed action plans for implementation. This methodology will be comparable to the CPSS-IOSCO assessment methodology, but specifically adjusted to the needs of the European context.

#### Analysis of open issues

In the context of developing the assessment methodology, a number of open issues were analysed further on the basis of a range of interviews and working sessions with targeted market participants, conducted in 2005.

Other open issues include: the need to harmonise settlement cycles in the EU (Standard 3), the effects of CSDs

*CESR-ESCB joint public statement  
on Clearing and Settlement  
Total number of responses: 3*



■ Banking  
■ Investment services



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engaged as principals in securities lending (Standard 5), the practicability and usefulness of requiring significant custodians to organise DVP settlement in their books (Standard 7), the relation between the banking supervisory framework and those standards dealing with credit risks (Standards 5 and 9), analysis of the potential risks that significant custodians may trigger in terms of financial stability (Standard 9), identification of those cases in which settlement in central bank money is not required (Standard 10) and clarification with regard to the measurement of efficiency and cost-effectiveness (Standard 15).

In addition, the practical organisation of the cooperation among regulators (Standard 18) is under further analysis.

### Standards for Central Counterparties

The Joint Working Group's original mandate identified the need for a clear regime for central counterparties (CCP's). As a first step, CESR/ESCB is expected to propose the enhancement of the original CESR/ESCB Standard 4 on CCP's, based upon the comprehensive set of global risk management recommendations for Central Counterparties by CPSS-IOSCO which were published at the end of 2004. This CESR/ESCB equivalent for CCP's is considered with a view to take any European specificities in this area into account.

#### Next steps

*The next steps will be discussed by the Members of both CESR and the ESCB and in close coordination with the European Commission.*

#### Statistics of meetings in 2005

The Clearing and Settlement group met seven times in 2005.

## 6.5.2 Investment Management Level 3 Work

### Application of the transitional provisions of the amending UCITS Directives

The Expert Group chaired by Lamberto Cardia, finalised its work on the guidelines for supervisors regarding the transitional provisions of the amending UCITS Directives in February 2005. The guidelines were developed to converge the different administrative practices Member States had developed in view of the ambiguities contained in the UCITS III legislative texts.

The solutions developed by CESR did not purport to resolve the underlying differences of opinion among Member States in the interpretation of the various provisions in the Directives. Instead, they represented common, practical approaches, which CESR members agreed to implement in the day-to-day practices they adopt, ensuring, both the efficiency of the UCITS market, as well as the protection of UCITS' investors.

CESR is currently reviewing the way its Members have implemented these guidelines. In particular, the first deadline included in the guidelines regarding the need for a simplified prospectus for UCITS I funds, was on 30 September. It seems there are a certain number of UCITS I funds that are still missing a simplified prospectus (and therefore marketed with only a full prospectus). However, information received from Members indicates that the number of funds concerned is not significant compared to the total amount of UCITS I funds. The next transitional provision related to existing grandfathered UCITS umbrella funds which could not launch sub-funds under the previous UCITS regime until 31 December 2005.

This review exercise is a valuable test for the CESR Members of the functioning of Level 3 measures, in particular, because most of CESR's work in the field of investment management is, due to the current legal framework, of a Level 3 nature.

### Simplification of the cross-border notification procedure of UCITS

Following the work done in relation to the application of the transitional provisions of the UCITS III Directive, which is considered to have already contributed significantly to the notification process, CESR Members decided that the Expert Group on Investment Management could helpfully contribute to the better functioning of the Single Market under this Directive by developing consistent standards for the notification requirements foreseen by the UCITS Directive. The Commission's Green Paper, published in July, underlined that the notification process of cross-border marketing of UCITS is one of the key areas of concern for the European asset management industry. A

drafting group was set up in February 2005 to prepare the draft guidelines. Last October, CESR published its first consultation paper (Ref. CESR/05-484) on this issue. The expert group recognises this is a challenging area to make progress in under the current Directive framework, but has made some progress. Most importantly, it has been able to agree on the critical underlying principle that the host Member State authorities cannot challenge a UCITS passport issued by the home Member State, even if they have concerns regarding some features of the UCITS that fall under the authority of the home Member State, e.g. investment policy. CESR has also agreed that the possible concerns of the host Member State authority are in these cases to be addressed by the competent authorities of the host and home Member State. The expert group is also of the opinion that the mediation mechanism CESR is currently developing could be of significant help in solving these kinds of problems in the future.

The proposed arrangements seek to bring greater transparency and certainty to the notification process with the aim to avoid uncertainty and prolongation of notification procedures. The proposals also enshrine common approaches to the documentation that must be submitted in the context of the notification procedure and to clarify the handling of sub-funds of umbrella funds.

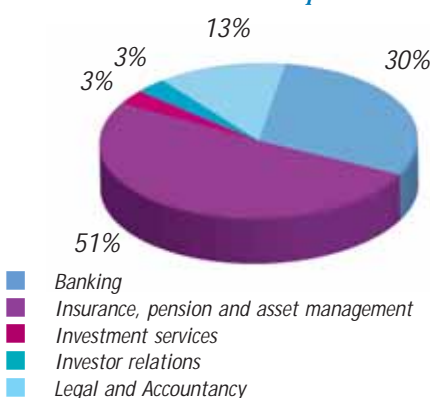
The Group also shares the view that the ongoing work on the eligible assets at Level 2 could significantly contribute to diminishing the problems related to passporting by facilitating convergence in the investment policy of the funds, which currently seems to be the major source of the problems related to this issue.

The Expert Group is expected to have finished working on this issue by June 2006.

The timetable for CESR's work is set out below.

**CESR's guidelines for supervisors regarding the notification procedure according to section VIII of the UCITS Directive**

*Total number of responses: 30*



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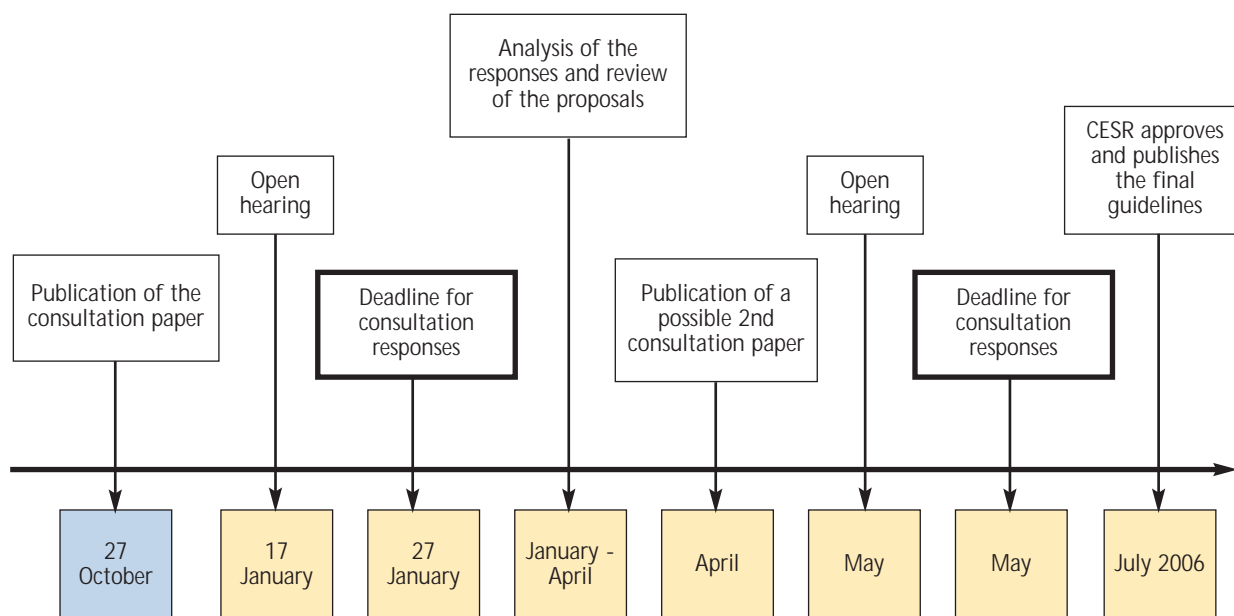
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### Review of implementation by Member States of the two UCITS Recommendations

Upon a request by the European Commission, CESR reviewed the implementation by Member States of the two UCITS Recommendations, which deal with the use of financial derivative instruments and simplified prospectus of a UCITS. The results, published last July, showed that the overall implementation of the Recommendations is at a reasonably good level in all the Member States. Some Member States have indi-

cated that the implementation of the Recommendations is still underway. The level of implementation varies considerably between different sections of the Recommendations. For instance, regarding the Recommendation on the simplified prospectus, the level of implementation on disclosure of costs and fees has not been achieved as effectively as most of the other recommendations. Particularly, the level of implementation regarding the indication of the existence of fee-sharing arrangements and soft commissions is unsatisfactory.

### Indicative CESR work plan on the guidelines on the notification procedure of UCITS



#### Next steps

*CESR's agenda for work in relation to investment management in 2006 will no doubt be significantly influenced by the future Commission work programme on UCITS. The Commission published its Green Paper on the enhancement of the EU framework for investment funds in July 2005. The four priority actions indicated by the Commission are the ones already mentioned on which CESR has been working: transitional guidelines, eligible assets, review of the implementation of the UCITS Recommendations, and simplification of notification procedures. CESR's input will no doubt be needed regarding many other parts of the Commission's future work programme. Which issues will in the future fall in Level 1, 2 or 3 remains to be seen, as well as the effect on CESR's agenda and priorities.*

*The current work programme of the CESR Expert Group on Investment Management includes many issues where work has not yet been started, including: conduct of business rules in the field of collective investment management, outsourcing, non-harmonised funds, consistency between UCITS and the other Directives, convergence of supervisory systems.*



### 6.5.3 Prospectus Level 3

#### Chair's Message

**Gérard Rameix, Secretary General of the AMF, France**

*“CESR has been very active in the area of Prospectus over the last four years by providing advice to the European Commission on the implementing measures of the Prospectus Directive and producing Level 3 recommendations for the consistent application of the Prospectus legislation.*

*After completion of these tasks, there has been a strong call from market participants for the establishment within CESR of a method of exchanging views on implementation problems and ideas, and the development and sharing of daily operational and supervisory best practices between members.*

*To cater for these demands, CESR has continued its work through the newly created Prospectus Contact Group that has concentrated the efforts of competent authorities to ensure supervisory convergence in the application of the new legal framework on Prospectuses that became effective on 1 July 2005. This group has focused on the simplification of procedural aspects for the correct functioning of the passport, but has also made an important effort to reach common approaches on the practical aspects/questions put forward by market participants and regulators.*

*We have a challenging task to fulfill. Namely, to contribute with public common positions to the harmonisation of market practices around Europe, to ease market participants' transition to the new regulatory framework and to foster a proper and consistent implementation of the European legislation on Prospectus.”*

#### Mandate

##### Mandate of the Prospectus Contact Group

To ratify the work conducted during 2005 by CESR prospectus experts, the Committee set up on 19 January 2006 a Prospectus Contact Group and issued the mandate this group will follow.

The Prospectus Directive and the Commission's Regulation on prospectuses became effective on 1 July 2005. Regulators and market participants are facing many application and operational issues arising from the implementation of this new legal framework. This is compounded by the fact that the Prospectus Directive is a maximum harmonisation Directive and that the scope for interaction between competent authorities has increased because of the passport. It is therefore essential to have convergent application amongst the competent authorities. CESR considers that in order to achieve such convergence it is necessary to hold practical and operational meetings of prospectus contact experts to discuss specific implementation and application issues and, to the extent possible, agree common solutions. A Prospectus Contact Group was therefore set up to fulfil this objective.

#### Background

Article 22 of the Prospectus Directive imposes on competent authorities the obligation to cooperate. In addition, CESR has been entrusted with a role to ensure more consistent and convergent application of the EU laws in the securities field.

Since 1 July 2005, market participants and regulators have been operating under a completely new legal framework on prospectuses, and many doubts and

practical issues have been raised. The need for a consistent approach to the new framework from competent authorities in the different jurisdictions has been a strong message received from market participants, which is also a necessity if the maximum harmonisation sought by the new European legislation on prospectuses is to be achieved. For this reason, CESR Members decided to undertake some work under CESR's Level 3 capacity to assist convergence in the day-to-day practices adopted.



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### Summary of the work done

After 1 July 2005, CESR Members faced a number of urgent issues, mainly in relation to the operation and the functioning of the passport. To address these practical issues, two meetings took place in September and November 2005, amongst prospectus experts of the different competent authorities.

In these meetings, issues related to practical administrative and procedural aspects that arise because of the necessary cooperation amongst competent authorities are discussed. Efforts have been made in order to simplify these processes and save time. To this effect, CESR has elaborated a common certificate of approval attesting that the prospectus has been drawn up in accordance with the Directive.

In addition, CESR has also established a contact list of the person(s) responsible for notification in each authority, enabling the relevant staff across the CESR membership to maintain contacts and answer any notification queries.

In addition, during these meetings, the prospectus experts discussed some issues linked to the implementation and application of the Prospectus Directive and Regulation that have not been tackled under CESR's recommendations issued in February 2005. The Commission is present at the meetings of this group and their views are sought on any matters that could arise in relation to the interpretation of the Community legislation. Of course, any agreements that CESR might reach on these issues do not prejudice the role of the European Court of Justice as the competent body to provide binding interpretations of the EU laws.

Market participants are very keen to be kept abreast of any common solutions reached by CESR Members. For this reason, CESR intends to publish on the CESR website the common agreements as they are approved by CESR. This will be a means to foster a proper and consistent implementation of the European legislation on Prospectus.

### Next steps

*In order to ensure that this group is going to work regularly, CESR Members decided on January 2006 to approve a mandate that sets out the terms under which the prospectus experts will have to operate and the objectives to be fulfilled.*

*CESR Members considered that the objective of the group is not to produce standards, guidelines or recommendations. However, where necessary, the Group can formulate proposals to CESR for the development of standards, guidelines or recommendations. To this end, a mandate approved by CESR will be needed for the completion of the project and normal consultation procedures will then be followed.*

*The main focus of the group is to discuss issues emerging from the practical and operational implementation of the Directive and Regulation. Discussions of individual cases will happen without the presence of the Commission.*

*According to the terms of the mandate, CESR will begin publishing the common positions agreed by its Members in relation to prospectuses during 2006.*

### Statistics of the meetings

The Prospectus Contact Group met twice during 2005.

## 6.6 Supervisory Convergence beyond CESR

### 6.6.1 Contacts with other Level 3 Committees

Following the extension of the Lamfalussy process to banking and insurance respectively by the creation of Committee of European Banking Supervisors (CEBS) on 24 November 2003 and the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) on 1 January 2004, CESR now has two sister committees.

In addition to CESR's work to enhance supervisory convergence on the day-to-day application of FSAP measures between its Members in the securities sector, it has also been widely recognised that a great deal could be gained by ensuring supervisory convergence also takes place horizontally, across sectors. For this reason the three Lamfalussy committees (3L3) CESR, CEBS and CEIOPS meet regularly to identify where cross-sector approaches can be developed. This regular contact takes place between staff at all levels and all three Committees have appointed contact points in order to ensure that information is efficiently distributed to those concerned in the respective Committees.

#### Joint Protocol and 3L3 work programme

Reflecting the need for the three Committees to work closely together, the Chairs of CESR, CEBS and CEIOPS signed a joint protocol on cooperation in November 2005 which formalised the nature of the relationship between the Committees.

Furthermore, in addition to the objectives of each Committee, as reflected in their respective founding charters, the Joint Protocol sets out the following key objectives common to all three Level 3 Committees:

- Sharing information in order to have compatible approaches;
- Exchanging of experiences which can facilitate supervisors' ability to cooperate;
- Producing joint work or reports to relevant EU committees and groups;
- Reducing supervisory burdens and streamlining processes;
- Having similar basic functioning of the three Committees.

The Joint Protocol contains five articles setting out the parameters for cooperation. It states that the Chairs and the Secretary Generals of the three Committees will meet at least two or three times a

year. The secretariats will also meet three times a year. The Committees also agree to inform each other of all non-confidential items for their respective plenary meeting agendas. The Committees undertake to conduct joint work either on own initiative or when receiving common mandates on similar subjects. Such work can be conducted in joint working groups and one Committee can be appointed with special responsibilities to ensure coordination of such work, all dependent on the issue at hand. Joint work will be based on a mandate from the respective Committees involved. Finally, the Joint Protocol sets out rules on reporting. At a minimum, each Committee will be briefed at each plenary meeting on the progress of ongoing common work. The arrangements set out in the Joint Protocol will be subject to annual evaluation.

The Joint Protocol will be complemented by a yearly common work programme. The work programme for 2006, on page 66 and 67, was approved at the January 2006 plenary meeting of the three Committees.

The work programme for 2006 sets out work to be done under three work streams namely: joint work; consistency projects; and joint reports to European Institutions and information points.

The Committees have undertaken to regularly provide each other with information at their meetings on a number of issues. As illustrated in the diagram The 3L3 Consolidated Work Programme on page 68, the section of overlapping responsibilities sets out where CESR can be expected to provide input, especially regarding issues such as Mergers and Acquisitions, IFRS and Mutual Funds/Policy holders protection.



# Supervisory Convergence (Level 3)

## Supervisory convergence beyond CESR 6.6

### 3L3 Work Programme 2006

1. Within the framework of the Joint Protocol, the Committees have decided to identify the issues set out below for work in 2006. Some issues have been prioritised. In addition to the issues listed below, the Committees may find other areas of common concern during the course of the year, depending (inter alia) on changes in the markets and legal initiatives. Exchange of information on such areas shall always be part of the cooperation between the Committees.

2. A progress report on the work to be done in the work programme shall be delivered to the June meetings of the respective Committees. Those meetings can serve as opportunities to alter the work programme.

3. Due to the inherent differences of the various tasks the Committees have set out for themselves in this work programme, the form in which the results of the work will be presented may vary both in terms of timing and format.

#### A. Joint Work

This section of the work programme sets out work which is to be carried out jointly by the three Committees, and which should result in joint output.

#### 1. Financial Conglomerates

The Committees agreed to set up a new interim committee with the name Interim Working Committee on Financial Conglomerates (IWCFC) to work in this area focusing on the implementation of the Financial Conglomerates Directive (FCD). The first aim of the IWCFC is to assess the current state of play as regards the results of transposition and assist in consistent application of the FCD regarding the conglomerates identified. Second, the group will tackle the convergence of national supervisory practices on issues with regard, for example, to capital requirements, intra group transactions and risk concentration. Third, the cooperation and coordination requirements between the supervisors involved will be an important element of the joint work. Apart from the implementation of the FCD, the IWCFC will not do any other cross sector work. CEBS and CEIOPS will provide the membership in this predominantly prudential file. This work has been identified as a priority.

#### 2. Joint Definition of Standards, Guidelines and Recommendations

The Committees will aim at preparing a joint document setting out common definitions and an explanation of the common application and usage

of Standards, Guidelines and Recommendations, of Level 3 measures as stated in the founding decisions of the respective Committees.

#### B. Consistency projects to reduce supervisory burdens and streamlining processes

This section of the work programme sets out mapping and comparison of sectoral work projects that aim at streamlining processes and developing consistent approaches across sectors. This might lead to future joint initiatives.

##### 1. Outsourcing

Cooperation between CESR and CEBS will continue in order to ensure consistency to the maximum extent permitted by the EU legal framework between the Level 2 provisions and the respective Level 3 guidance stemming from MIFID and the Level 3 guidance developed in relation to the CRD. The aim of this work is to create consistency between standards of CEBS, the Level 2 and 3 work in the MIFID area and the future work on UCITS and Solvency II. To avoid inconsistencies with these developments, CEIOPS is participating in this alignment in view of its work in the framework of the Solvency II project. After a mapping of the respective requirements a report is planned to be finalised in the second quarter of 2006. This work has been given priority.

##### 2. Supervisory cooperation

The Committees will compare their work on regulatory approaches and cooperative arrangements between the various supervisors, or competent authorities (depending on the particular sector) in a home and host environment. The aim of this work is to research whether the individual sectoral work done by the Committees might be extended to cooperate with supervisors or competent authorities in the other sectors and to take on board good practices from other sectors. This should ensure cross-sector consistency of approaches. The comparison will be done during the course of 2006.

##### 3. Reporting requirements

The Committees will request input from relevant market participants to take stock of potential inconsistencies in reporting requirements stemming from EU-directives applying to European supervised entities and market participants, taking into account IFRS. The Committees aim at presenting a first result of this inventory within the second half of 2006. Based on this inventory, future work may be proposed.

#### 4. Internal governance

The work within the context of the CRD and the MIFID on internal governance of banks and investment firms will be discussed. An analytical report will be prepared and shared with the market on any overlaps and areas of possible further work. This will take into account the current thinking on Solvency II.

#### C. Reports to European Institutions

##### 1. Financial market trends and cross sector risks

On cross sector risks the Committees will be jointly reporting to various European institutions and/or committees, such as the Economic and Financial Committee/Financial Stability Table (EFC/FST) with cross-sector reports for its meeting in September. The Committees will also provide the FSC with reports for its contributions to the EFC/FST.

In this context, the Committees will continue to monitor the situation regarding any problems raised regarding off-shore centres (OFCs) and decide on any need of Level 3 action in light of the terms of reference of the Financial Services Committee (FSC).

##### 2. Supervisory Convergence

##### 3. Consultation responses to EU institutions.

The Committees will provide joint responses to European Commission consultation papers and

other documents when the need arises during the course of the year.

#### D. Information points for the exchange of experiences

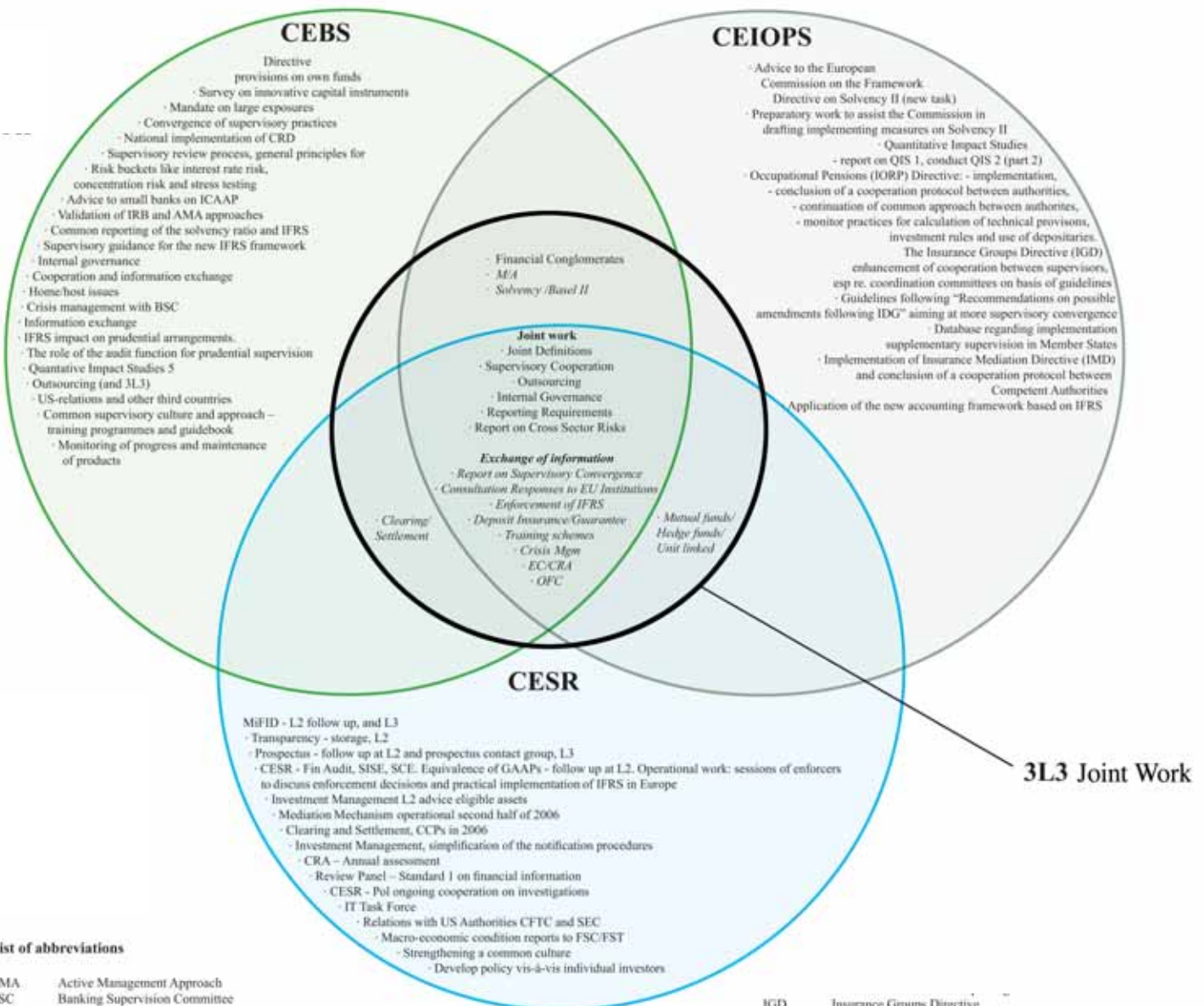
The establishment and improvement of information exchange between the working groups of the Committees have been given priority. On the following issues the Committees will regularly exchange information on their respective work in progress, with the aim of identifying the need for any further specific action:

1. Mergers and acquisitions
2. Solvency II/Basel II
3. Enforcement of IFRS
4. Deposit insurance/Deposit guarantee schemes/Insurance guarantee schemes
5. Standards on clearing and settlement
6. Mutual funds/Hedge funds/Unit linked insurance contracts & Retail investors/Policy holders protection
7. External Credit Assessment Institutions/rating agencies
8. Crisis Management
9. Offshore-Centres
10. Developing training schemes
11. Impact Assessments



## 3L3 Consolidated Work Programmes 2006

*3L3-work in italics denotes that the points are for exchange of information*



## List of abbreviations

AMA	Active Management Approach
BSC	Banking Supervision Committee
CCP	Central Counter Party
CRA	Credit Rating Agencies
CRD	Credit Risk Directive
EC	European Commission
FSC	Financial Services Committee
FST	Financial Stability Table
GAAP	Generally Accepted Accounting Practices
ICAAP	Internal Capital Adequacy Assessment Process
IFRS	International Financial Reporting Standards

IGD	Insurance Groups Directive
IMD	Insurance Mediation Directive
IORP	Directive on the Activities and Supervision of Institutions for Occupational Retirement Provisions
IRB	Internal Ratings Based
M/A	Mergers and Acquisitions
MiFID	Markets in Financial Instruments Directive
OFC	Offshore Financial Centres
QIS	Quantitative Impact Studies
SCE	Sub-Committee on Enforcement
SISE	Sub-Committee on International Standards Endorsement

## 6.6.2 EU/US dialogue

### CESR's Chairman

**Arthur Docters Van Leeuwen stated:**

*"2005 was an important year for the EU/US financial services dialogue, particularly during a time of new leadership and structural change on one side of the Atlantic, and the implementation of a number of significant FSAP measures on the other which will have a significant impact on the securities markets on both sides of the Atlantic. CESR considered it important to cement already well established working relationships with the CFTC and the SEC."*

*As CESR's efforts shift to supervisory convergence and practical implementation, common work by supervisors on both sides of the Atlantic to facilitate fluid and profitable trans-Atlantic business is crucial. In order to facilitate this, CESR agreed on and started working on a Common Work Programme with the CFTC to facilitate trans-Atlantic Derivatives Business, discussed areas of common interest and priorities for future cooperation and work with the SEC, and met with US Secretary of Treasury, John Snow.*

*We look forward to further cementing our cooperation and working relationships with the CFTC and the SEC in the years to come."*

### The regulatory and supervisory dialogue with the US CFTC

At the beginning of 2005, the Commodity Futures Trading Commission (CFTC) and CESR discussed how to improve the trans-Atlantic derivatives business. This discussion led to the organisation of a Round Table on trans-Atlantic derivatives business in February, where, the views of practitioners from the derivatives markets themselves, the intermediaries and end-users from the European Union and the United States, gave their views on how trans-Atlantic relations in these areas could be facilitated.

A communiqué seeking written comments by 15 May 2005 (Ref. CESR/05-245) was also published, and 11 comments from different sectors were received.

Following this, a joint two year work programme between CESR and the CFTC was established in June, which set out practical ways in which CESR and the CFTC can work together in the form of a Joint Task Force on trans-Atlantic Derivatives Business.

The working members of the Joint Task Force are the CFTC and six national Members of CESR assisted by the CESR Secretariat. The Joint Task Force is jointly led by the CFTC's Director of International Affairs and the Secretary General of CESR, and has met twice since its establishment in June.



**CESR-CFTC Communiqué requesting comment on a Common Work Programme to facilitate Trans-atlantic derivatives business**  
Total number of responses: 11



### Enhanced Transparency and Clarity of Regulatory Requirements

The CESR-CFTC Common Work Program consists of two strands of work. The first aspect of the work programme deals with enhanced transparency and clarity of regulatory requirements. In this context, the CESR-CFTC Joint Task Force objective is to facilitate understanding of regulatory requirements for access to US and EU derivative markets, by posting on EU and US supervisors' websites, the key information elements for cross-border market participants. This work has progressed a great deal since July, and the results will be visible on both the CFTC & CESR's websites during the second and third quarter of 2006.

The key information that will be posted on these websites will be divided into two parts. The first part will be a document with Frequently Asked Questions (FAQ) which will give market participants some prac-

# Supervisory Convergence (Level 3)

## Supervisory convergence beyond CESR 6.6

tical answers to commonly asked questions. The second part of the information presented will take the form of a portal per jurisdiction through which market participants will be able to access the specific and detailed information related to: (1) the national regulators; (2) exchanges and clearing organisations; (3) regulation in relation to investment services; and, (4) end-users.

For the first time, this will gather together in one place answers and links to much of the information which at present is located in a number of different places, and is presented in such a way that it is currently difficult to compare consistently.

### Simplified access or recognition procedures

The second part of the work relates to simplified access or recognition procedures, where the Joint Task Force will, amongst other tasks, review the information requirements of the CESR Members and the CFTC, with a view to creating a common template of core information which could be used for intermediaries and exchanges wishing to gain access to a derivatives market or receive recognition on both sides of the Atlantic.

On the 13 December 2005, CESR Chair, Arthur Docters van Leeuwen met with the US CFTC Chair, Reuben Jeffery III, to discuss the CESR-CFTC dialogue, and further cemented the CFTC-CESR working relationship by participating and speaking at the CFTC's Regulatory Consultative Forum Roundtable meeting, attended by all the CFTC Commissioners.

### Next steps

*Over the second quarter of 2006 CESR Members will start publishing documents with Frequently Asked Questions and templates with links to where relevant information can be found.*

*The Joint Task Force will arrange a meeting with the Round Table participants or other members of the derivatives industry which have specialised knowledge in the derivatives industry.*

*In order to simplify the access to the markets, the Task Force will also conduct work in order to explore ways of simplifying the application procedures for commencing and operating cross-border businesses.*

*Regular contacts take place between the staff of CESR and of the US CFTC and SEC on aspects of regulation.*

### The regulatory and supervisory dialogue with the US SEC

In June 2004, CESR and the Securities and Exchange Commission (SEC) formalised their cooperation in a document setting out the terms of reference for the cooperation and collaboration regarding market risks and regulatory projects between the SEC and CESR. These terms of reference include:

1. The identification and discussion of regulatory risks present in the US and EU securities markets. This will provide an opportunity to identify risks developing in USA and EU securities markets; and
2. Early discussion of potential regulatory projects in the interest of facilitating regulatory convergence.

During the course of 2005, CESR and the SEC picked up where they left off in 2004 when CESR and the SEC formalised their cooperation.

On 12 September 2005, CESR and the SEC held a meeting in Paris, attended by the SEC's Director of International Affairs, Ethiopis Tafara. A number of experts from the SEC also attended the meeting on video-link from Washington D.C. During the meeting, a large number of items were discussed such as, deregistration of European companies listed in the US, IFRS, Credit Rating Agencies, Mutual Funds Regulations and market structure issues.

On 14 December, 2005, Arthur Docters van Leeuwen met with Chairman Cox of the SEC in Washington D.C. The Chairmen discussed the CESR – SEC dialogue and the issues which could be subject to common work in 2006. Among the issues discussed were, the new SEC proposals for deregistration of foreign issuers and IFRS.

On the occasion of the meeting, CESR Chairman Docters van Leeuwen noted:

*"Our meeting today with the new Chairman of the SEC, Christopher Cox, has added important impetus and confirmed the willingness for EU and US securities supervisors to achieve results in order to facilitate transatlantic financial activity within a sound and protective framework. Working together using credible time frames we can achieve a great deal, in particular, in the area of cross-border listings to the benefit of both the US and EU financial markets. Productive cooperation between CESR and the SEC will undoubtedly facilitate the realisation of key objectives of the US-EU Financial Markets Regulatory Dialogue."*

### Visit by John Snow, US Secretary of the Treasury

CESR had the honour of welcoming the US Treasury Secretary, John Snow, on 15 June 2005 at CESR's offices in Paris. The meeting with CESR Chair Arthur Docters van Leeuwen and Vice-Chair Kaarlo Jännäri, provided a unique opportunity to explain the way in which securities markets in the European Union are evolving and the ongoing process of integration and harmonisation, in which CESR plays an operational role. The cooperation with US regulators was discussed, as well as several accounting issues. Both parties confirmed the importance of the constructive cooperation established between CESR and the SEC and the CFTC and the need for it to continue in order to ensure investors are effectively protected and to facilitate trans-Atlantic business.





*In addition to the Annual Report for 2005, CESR produced several additional reports for the EU Institutions and has established clearer accountability links with Council Committees and with the European Parliament during the course of 2005.*

### 7.1 Council Committees

#### *Financial Services Committee (FSC)*

The FSC is an EU Council Committee that gathers together high-level representatives of the European Union's Finance Ministries. At its July meeting in 2004, the FSC invited CESR (and the other Level 3 committees) to report regularly on supervisory convergence. The need for this formalisation of reporting processes should be seen in the context of the Council conclusions of June and November 2004 on financial integration, which stated that convergence of supervision should be emphasised and that consistent implementation and effective enforcement by Member States must have top priority.

Following this, CESR presented in April 2005 a detailed report which outlined the steps CESR is adopting to improve supervisory convergence in the European Union (Ref. CESR/05-202). The Lamfalussy process envisaged a critical role for supervisors to work in a co-ordinated fashion. The purpose of this increased supervisory convergence in the day-to-day application of European law and in supervisory practices generally, is to assist the development of the Single Market in Financial Services.

The FSC Chairman welcomed this first progress report on supervisory convergence by CESR, and noted that these regular reports by CESR on the results achieved, would strengthen CESR's accountability links with the Council and the other EU institutions.

#### *Financial Stability Table of the Economic and Financial Committee (EFC/FST)*

The Financial Stability Table (FST) is a group of the Economic and Financial Committee (EFC) and was chaired by Mr Caio Koch-Weser, and by Xavier Musca from November 2005. The FST has as its main task the function of gathering information in order to monitor the overall stability of the EU financial system. It gathers its information from many sources, of which CESR is one of several organisations that reports to it. CESR reports to the EFC/FST twice a year at its April and September meetings.

Discussions on supervisory convergence both on a cross-border and cross-sector basis, are high on the agenda at the FST and, it has requested that the FSC reports to it on supervisory convergence.

CESR has also contributed reports in other areas of interest to the EFC/FST. At the FST meeting in April 2005, CESR presented a report on the macro-economic situation in the EU. This presents CESR's view on the situation on wholesale markets, primary market activities and trading of bonds and derivatives, as well as retail markets: investment funds; trading of shares and distribution of products. The report also identified the main risks for the current economic developments.

CESR also presented the final report on Off-Shore Financial Centres, together with CEBS and CEIOPS. The report was well received and based upon this contribution, the EFC/FST decided to send a joint report to the Financial Stability Forum (FSF) on the matter. The Financial Stability Forum brings together different national authorities, regulators, supervisors and central bank experts and organisations dealing with financial stability at a global level.

In addition, CESR presented at the September FST meeting, a report on financial market trends and developments in the first half of 2005.

Thirdly, CESR, CEBS and CEIOPS presented for the September FST their first common cross-sector report following an invitation in the April FST meeting. In this first cross-sector report, the three Committees dealt with conglomerates, eligibility of hedge funds, bond market and the functioning of the markets as regards outsourcing policy issues. These issues are still on the agenda for the three Level 3 Committee's work programmes (see Chapter 6.6.1). CESR will continue to report to the EFC/FST at the April and September meetings, with a further cross-sectoral report anticipated for the meeting in September.

#### *ECOFIN*

In October of 2005 the Chairmen of the three Level 3 Committees were invited to speak at the ECOFIN Council meeting. Firstly, Henrik Bjerre-Nielsen, (Chairman of CEIOPS) spoke on risk based supervision, followed by a speech of Arthur Docters Van Leeuwen (CESR) who spoke on issues on streamlining supervisory powers and finally, Jose-Maria Roldan (the then Chairman of CEBS) concluded with a speech on common approaches to regulatory reporting. It was understood that once a year the chairs of the three Level 3 Committees will be invited to an ECOFIN meeting to personally update Europe's finance ministers.



## 7.2 The European Parliament

The European Parliament's Committee on Economic and Monetary Affairs of the European Parliament (ECON) set out in two reports<sup>1</sup> a formal request to CESR to strengthen its accountability to the European Parliament.

CESR was therefore pleased to welcome a delegation of the European Parliament to CESR's offices in Paris on 31 March 2005, lead by the Chair of ECON, Mme Pervanche Berès. The meeting provided CESR with the opportunity to put before the members of ECON CESR's work on a number of key issues and, to express CESR's willingness to place its accountability with the European Parliament on a more formal footing. Following the dialogue that was launched at this meeting, the Chair of CESR was invited to a formal hearing held by the ECON Committee on 13 September 2005, at which, the new accountability framework was formalised.

The details of this accountability framework were published by the ECON Committee in the form of a press release on 13 September which, established that:

- CESR will notify ECON of all working mandates and will keep ECON informed, at the earliest possible stage, of work carried out at Level 3 of the Lamfalussy procedure on subjects which raise sensitive political issues;
- CESR will make ECON an official recipient of the key letters and other documents that CESR sends to the Commission and the Council;
- CESR will submit periodic written reports to the European Parliament on its activities and on progress achieved on supervisory convergence;
- CESR will closely cooperate with the European Parliament by providing, at an early stage, information on key issues and work likely to have a legislative impact;
- The Chair of CESR will participate in a parliamentary hearing twice a year and on further occasions if felt necessary by ECON.

## 7.3 The European Commission

As envisaged in the Commission Decision establishing CESR, the Committee has a close working relationship with the European Commission, which participates actively in the meetings of CESR. The secretariat of CESR is in permanent contact with the services of the DG Internal Market. In addition, the Chairs of CESR visited Commissioner McCreevy on two occasions to report on the activities of CESR.

<sup>1</sup> - See both the report of Piia-Noora Kauppi MEP on Clearing and Settlement (A6 -0180/2005) and the Report of Ieke van den Burg MEP (A6-0087/2005)



**Fabrice Demarigny, Secretary General of CESR**

***“CESR will undergo a change of nature in 2006. Operational supervisory activity will now dominate the agenda. This will require a real change in the way in which CESR Members and their experts participating in the work behave. Supervisors will now have to work with their EU colleagues the same way that they do with their colleagues at home. They supervise the same market today: the Single Market. The creation of a common supervisory culture will be high on the CESR agenda in 2006. Priorities on future work will now be selected by CESR Members themselves and they have indicated their intention to be rigorous and realistic.”***

The main characteristics of the 2006 work programme of CESR are the following:

There will be a significant diminishment, if not disappearance, of the regulatory activities of CESR. Level 2 advice to the European Commission on the key FSAP directives was delivered the previous year and the legislative and regulatory framework for the development of the Single Market for financial services in Europe is almost in place.

The focus will therefore be on making CESR active as an operational network of national securities supervisors at Level 3 of the Lamfalussy process. This will include making cooperation between supervisors on investigatory information within CESR-Pol almost as fluid as for domestic cases. The enforcement of IFRS will happen early in 2006, regular contacts between enforcers will multiply to favour convergent application of these standards across Europe, and an evaluation of the first year of application of IFRS will be conducted. To facilitate the use of the passport for issuers, CESR will activate a Level 3 Prospectus group that will provide, where necessary, rapid answers to facilitate a common application of the Directive. In the same spirit, the Investment Management group will work in order to ease the cross border notification of UCITS. Finally, to prepare the entry into force of the MiFID in 2007, CESR will establish a MiFID Level 3 Expert Group that

will develop common approaches and establish the basis for further operational work.

Best practice in the field of supervisory convergence will be fully efficient only if the Members of CESR are able to discuss and solve divergent opinions on a daily basis. To favour this, the Review Panel work will be refocused and made more visible, and members will agree to find common solutions through a well calibrated mediation mechanism.

One key operational aspect of cooperation between authorities is the use of data sharing arrangements for a smooth functioning of the directives. The use of such arrangements comes naturally from the MiFID and Transparency directives but embraces also other areas of cooperation between supervisors. A horizontal vision by CESR of these IT aspects will happen in 2006.

As described in the Joint Protocol on Cooperation between CESR, CEBS and CEIOPS (Ref. CESR/05-405) a more structured coordination will take place with CEBS and CEIOPS, as well as with US authorities.

Finally, it should be noted that additional efforts will be made to associate more closely individual investors to CESR work, both in adapting our consultation policy to their capacity to influence the process and by giving access to more information to understand the functioning of the Single Market.

## Level 2

Areas of work	Description
MiFID	CESR will follow up its advice to the European Commission, and actively participate in the meetings of the ESC and participate in hearings of the Parliament.
Transparency	A first public consultation on CESR's draft advice on storage of financial information will start in January 2006 and the final advice must be delivered to the European Commission by June 2006 (in addition, an interim report on cost and funding issues must be presented for April/May 2006).
Prospectus	CESR delivered its advice on complex financial histories information to the Commission in October 2005. CESR will follow up its advice and actively participate in the meetings of the ESC.

Equivalence of GAAPs	CESR will follow up its advice to the European Commission on the equivalence of US, Canadian and Japanese GAAPs and actively participate in the meetings of the ARC and the ESC.
Investment Management	CESR will follow up its advice on eligible assets to be sent to the European Commission in January 2006, and actively participate in the ESC.

### Level 3

<i>Areas of work</i>	<i>Description</i>
Mediation Task Force	CESR launched a consultation in September 2005 on the establishment of a mediation mechanism. The final proposals will be approved and published during the first half of 2006. It is expected that the mechanism will be operational in the second half of 2006.
MiFID	Work on areas where common approaches and operational tools could be developed (depending on content of Level 2 texts) will begin during the first half of 2006. A specific Level 3 MiFID group will be created to monitor this work.
Clearing and Settlement	CESR informed the European Commission on progress achieved so far in the elaboration of an assessment methodology for the Clearing and Settlement standards and the elaboration of standards for Central Counterparties. CESR will closely coordinate its activities with the European Commission in 2006.
Prospectus	Through a newly established Prospectus Contact group, CESR Members will discuss practical issues on the application of the EU legislation on Prospectus and publish the results of these meetings. An evaluation of the functioning of the Directive might be conducted after a year of entry into effect.
Investment Management	Work in relation to the simplification of the notification procedures will continue with a possible second consultation in the first half of 2006, and a final approval by the summer. Possible future work will start on interaction with the MiFID, in particular on conduct of business rules.
Credit Rating Agencies	Through a 'voluntary' framework, CESR will assess annually the compliance of CRAs with the IOSCO code. CESR will also organise an annual meeting with CRAs to discuss any issues that might have arisen in relation to the implementation of the IOSCO Code. CESR will report its findings to the European Commission.
Review Panel	The Review Panel is assessing the level of implementation of Standard No 1 on financial information, with the view of publishing a report in 2006. In addition, further work will also continue on the review of transitional guidelines under the UCITS Directive, following which a decision will be taken as to whether or not any further work on this issue by the Review Panel will be necessary. Furthermore, the mapping exercise of the supervisory powers goes on during 2006. The Review Panel will start an attempt to delete outdated or redundant CESR standards, recommendations and guidelines.
CESR-Fin - Audit - SISE - SCE	CESR-Fin will continue to increase its operational activities, which include periodic sessions of enforcers of financial information for discussing enforcement decisions and practical issues with the implementation of the IFRS in Europe. The operational activities also include the management of the CESR database for enforcement decisions taken at national level in relation to financial reporting. CESR will start in 2006 a general evaluation of the first year of application of IFRS in the EU. The group will also analyse possible means for increasing the operational interactions between CESR and other European and non-European players in the area of financial reporting.



In parallel, CESR-Fin will continue to monitor the IASB's work and the EU endorsement process of IFRS and work on converging methodologies for enforcement of financial information. In the area of audit, CESR will first make a general review of the role of securities regulators in the oversight of the audit profession and on their relationship with auditors of public listed companies. CESR also plans to monitor the implementation of the 8th Company Law Directive (the auditing directive), in particular on aspects of application of ISAs in Europe.

CESR-Pol	<p>CESR-Pol will continue ongoing cooperation on investigations. Work on convergent application of the Market Abuse Directive will continue, including an evaluation of the first experiences of the functioning of the Directive. CESR-Pol will start enforcement and cooperation work under the MiFID.</p> <p>Finally, CESR-Pol will exchange experiences regarding un-cooperative jurisdictions and pursue dialogue with the supervisors of Liechtenstein and Switzerland.</p>
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### c) CESR's other areas of work

<i>Areas of work</i>	<i>Description</i>
IT Task Force	For the purpose of implementing the MiFID and the Transparency Directive the Task Force will prepare a policy and operational paper, clarify technical choices, evaluate possible synergies between the two projects and propose the way in which CESR should be organised internally to develop IT Networks if necessary.
Macro-economic conditions	CESR will continue to provide input to the Financial Stability Table of the EFC. A specific contribution on cross sector risk will be prepared in cooperation with CEBS and CEIOPS. CESR will develop its capacity of economical analysis of the evolution of financial markets and activities and anticipate any need of regulatory or supervisory intervention. In addition, methodologies of impact assessment will be investigated in order to consider, where necessary, its use for CESR work.
Individual investor protection and involvement	CESR will follow up on the two day consumer work shop held in November 2005, so as to further involve individual investors in CESR's work, and contribute to the various investor education initiatives underway, both nationally and by other institutions.
Cross sector activities	In recognition of the importance of cooperation between the Level 3 Committees, a joint Level 3 cooperative framework including CESR, CEBS and CEIOPS has been established. Following ratification of a Joint protocol which sets out the basis of cooperation and coordination between the 3 Committees, as well as the scope of areas of its work a work programme for 2006 has been agreed. CESR will participate as an observer in the newly established Financial Conglomerates Working Committee (see chapter 6.6.1).
Relations with US Authorities	CESR/CFTC Task force will continue its work according to the work programme finalised with the CFTC at the London meeting in June 2005. The Joint Task Force is currently developing a common template of core information which could be used to structure regulatory information on relevant authorities internet sites. The Joint Task Force will also review the information in the area of simplified access that is required by CESR members and CFTC to see whether a common template of core information can be developed. Dialogue with the SEC will continue to take place at staff level on a more regular basis. The issues discussed will include, in particular, Credit Rating Agencies, deregistration of EU companies, convergence of US GAAP and IFRS.

<b>Relations with third countries supervisory authorities</b>	In 2006, CESR will welcome, as observers, the securities supervisors of Romania and Bulgaria. CESR will also continue close contacts with the group of securities supervisors of candidates to the EU. Finally, where requested, CESR will accompany the EU Commission in its global dimension strategy (China, India, etc.)
<b>Strengthening a common culture amongst supervisors</b>	In 2006, CESR will develop an internal communications tool to favour exchange of staff between Members. In addition, it is developing joint training opportunities for staff of supervisors.

To support the necessary operational role of CESR, the structure of the secretariat has been redesigned in three directorates. The first one covers all aspects related to listed companies and the disclosure of financial information to investors. It deals with the convergent application of the Prospectus, Transparency and Takeover Directives as well as with the use of IFRS in the EU.

The second one covers issues related to financial markets, intermediaries, investment management and market integrity.

The third one will focus on more horizontal and policy issues including liaison with EU Committees, 3L3 and relationships with third country supervisors. It will also provide economic and legal support to the other directorates and support the work of the Review Panel and the Mediation Mechanism. Finally, to answer the need to coordinate the establishment of IT data sharing arrangement between CESR members, an IT project manager was recruited in early 2006.

An organigram of CESR's new structure can be seen overleaf

## PROFIT AND LOSS (Revenues and expenses)

As at December 31, 2005 (In Euros)

	12/31/2005	12/31/2004
<b>REVENUES</b>		
Contributions from Members	2,400,000	2,177,426
Annual conferences	-9,000	112,800
Profit on marketable securities	39,135	32,399
Other	4	26
<b>Total revenues</b>	<b>2,430,139</b>	<b>2,322,651</b>
<b>EXPENSES</b>		
Salaries and employee benefits	1,162,285	1,005,066
External staff	307,873	236,254
Rental	448,249	429,515
Travel	199,527	130,334
Office supplies	12,698	20,645
Organisation and follow up of meetings	32,965	146,108
Telecommunications	32,724	26,181
Transportation and communication expenses	0	0
Printing	22,969	19,794
Computer & IT development	50,931	67,931
Professional fees	57,305	53,184
Depreciation of fixed assets excluding computer	31,533	32,801
Miscellaneous	11,293	9,830
<b>Total expenses</b>	<b>2,370,352</b>	<b>2,177,642</b>
<b>Excess of revenues over expenses</b>	<b>59,788</b>	<b>145,010</b>

<ul style="list-style-type: none"> <li>• <b>Ari Voipio</b> <i>IT Project Manager</i></li> </ul>	<ul style="list-style-type: none"> <li>• IT Data sharing projects,</li> <li>• Secretariat of IT governance structure</li> </ul>	<b>Fabrice Demarigny</b> <i>Secretary General</i>
<ul style="list-style-type: none"> <li>• <b>Victoria Powell</b> <i>Communication Officer</i></li> </ul>	<ul style="list-style-type: none"> <li>• Press, Communications</li> <li>• Annual report, Conferences/Speeches</li> <li>• Investor Education</li> <li>• Implementation of HR and joint training initiatives</li> </ul>	<i>Deputy to the Secretary General</i> <b>Carlo Comporti</b> Management office, Budget, Plenary, Market Participants Consultative Panel
<b>Horizontal Coordination</b> <b>Geraldine Levy, Director</b>		<b>Markets and Intermediaries</b> <b>Carlo Comporti, Director</b>
External relations <ul style="list-style-type: none"> <li>• <b>Jacob Lönnqvist</b> <i>Senior Officer</i></li> </ul>	<ul style="list-style-type: none"> <li>• Relations with the EU Parliament</li> <li>• Preparation of meetings of EU Committees</li> <li>• Coordination with CEBS and CEIOPS (3L3)</li> <li>• Relations with Non-EU counterparts (inc. SEC &amp; CFTC)</li> </ul>	Investment Firms <ul style="list-style-type: none"> <li>• <b>Diego Escanero</b> <i>Senior Officer</i></li> <li>• <b>Jan Sovar (Suran)</b> <i>Junior Officer</i></li> </ul>
		<ul style="list-style-type: none"> <li>• Investment services</li> <li>• Rules of conduct</li> <li>• Organisational requirements</li> <li>• Conflicts of interest</li> <li>• Reporting requirements</li> </ul>
Legal Analysis and Review Panel <ul style="list-style-type: none"> <li>• <b>Mina Filippa</b> <i>Legal Advisor</i></li> </ul>	<ul style="list-style-type: none"> <li>• Legal analysis and support</li> <li>• General legislative work</li> <li>• Company law/corporate governance</li> <li>• Mediation</li> </ul>	Financial Markets <ul style="list-style-type: none"> <li>• <b>Jari Virta</b> <i>Senior Officer</i></li> </ul>
		<ul style="list-style-type: none"> <li>• Regulated markets</li> <li>• MTF</li> <li>• Pre/post trade transparency</li> </ul>
		Clearing & Settlement <ul style="list-style-type: none"> <li>• <b>Wim Moeliker</b> <i>Senior Officer</i></li> </ul>
		<ul style="list-style-type: none"> <li>• Follow-up of Standards</li> <li>• Liaison with ESCB, ECB, BSC, CEBS, G30</li> <li>• Liaison with CESAME</li> </ul>
Financial Markets Analysis <ul style="list-style-type: none"> <li>• <b>Alexandra Berketi</b> <i>Economist</i></li> </ul>	<ul style="list-style-type: none"> <li>• Monitoring Integration</li> <li>• Assessment market evolutions</li> <li>• Contribution to EFC/ Stability Round Table</li> <li>• Cost/benefit analysis methodology</li> </ul>	Investment Management <ul style="list-style-type: none"> <li>• <b>Lucie Matolínová*</b> <i>Senior Officer</i></li> <li>• <b>Enrique Velázquez</b> <i>Junior Officer</i></li> </ul>
		<ul style="list-style-type: none"> <li>• Application of UCITS directives</li> <li>• Supervisory convergence</li> <li>• Asset management modernisation</li> </ul>
		Market Integrity/CESR-Pol <ul style="list-style-type: none"> <li>• <b>Angie Reeh-Schild</b> <i>Senior Officer</i></li> </ul>
		<ul style="list-style-type: none"> <li>• Application of MAD</li> <li>• Secretariat of CESR-Pol</li> <li>• MiFID cooperation matters</li> <li>• Cooperation mediation/ database</li> </ul>

\* In replacement of Jarkko Syyrilä from April 2006

- **Rebecca Ball**, Assistant to Fabrice Demarigny
- **Solveig Kleiveland**, Assistant, Webmaster
- **Karim Abdelali**, Logistics

**Financial Information**  
**Michel Colinet**, *Director*  
*Secretary of CESR-Fin*

Accounting/CESR-Fin  
 • **Marion Bougel-Bomtemps**  
*Senior Officer*

- Enforcement of IFRS/Database
- Endorsement of IFRS
- Audit
- Liaison with ARC, EFRAG AURC and EGAOB

Prospectus, Takeover Bids,  
 Credit Rating Agencies  
 • **Javier Ruiz**  
*Senior Officer*

- Offering and listing prospectuses
- Supervisory convergence
- Take over bids
- Credit rating agencies

Transparency  
 • **Mina Filippa**  
*Senior Officer*

- Dissemination and storing of regulated information
- Periodic financial information
- Shareholdings

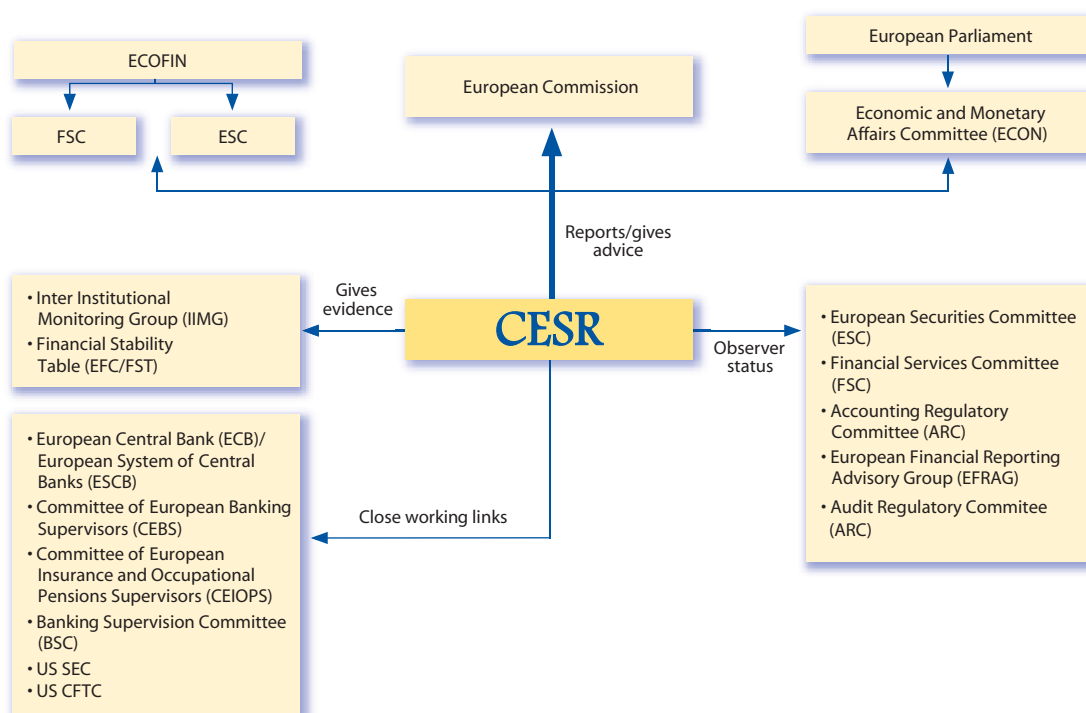


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**9.1 CESR in context:**

## CESR's inter institutional relationships



## 9.2 List of Members

-  **COMMISSION BANCAIRE, FINANCIERE ET DES ASSURANCES/COMMISSIE VOOR HET BANK-, FINANCIE- EN ASSURANTIEWEZEN/KOMMISSION FÜR DAS BANK, FINANZ- UND VERSICHERUNGSWESEN**  
Rue du Congrès 12-14, BRUXELLES 1000, BELGIUM  
*Member:* Mr Eddy WYMEERSCH (Chairman)  
*Telephone:* +32 2 220 5211 - *Fax:* +32 2 220 5817  
*CESR'S contact person:* Mr Jean-Michel VAN COTTEM (Deputy Director)  
*Telephone:* +32 2 220 5404 - *Fax:* +32 2 220 5424  
*Web site:* <http://www.cbfa.be>
-  **CZECH NATIONAL BANK**  
Na Příkopě 28, 115 03, PRAHA 1, CZECH REPUBLIC  
*Member:* Mr Pavel HOLLMAN  
*Telephone:* +420 224 411 111 - *Fax:* +420 224 414 230  
*Telephone:* +420 224 413 050  
*Web site:* <http://www.cnb.cz>
-  **FINANSTILSYNET**  
Gl. Kongevej 74 A, 1850 FREDERIKSBERG C, DENMARK  
*Member:* Mr Henrik BJERRE NIELSEN (Director General)  
*Telephone:* +45 33 55 82 82 - *Fax:* +45 33 55 82 00  
*CESR'S contact person:* Mr Stig NIELSEN  
*Telephone:* +45 33 55 83 42 - *Fax:* +45 33 55 82 00  
*Web site:* <http://www.ftnet.dk>
-  **BUNDESANSTALT FÜR FINANZDIENSTLEISTUNGSAUFSICHT (BaFin)**  
Lurgiallee 12, 60439 FRANKFURT AM MAIN, GERMANY  
*Member:* Mr Jochen SANIO (Chairman)  
*Telephone:* +49 228 4108 1612 - *Fax:* +49 228 4108 1550  
*CESR'S contact person:* Mr Philipp SUDECK (International Policy and Affairs)  
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*Web site:* <http://www.bafin.de>
-  **FINANTSINSPEKTSIOON/ESTONIAN FINANCIAL SUPERVISION AUTHORITY**  
Sakala 4, 15030 TALLINN, ESTONIA  
*Member:* Mr Raul MALMSTEIN (Chairman of the Management Board)  
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*CESR'S contact person:* Mr Kaiko TROPP (Member of the Board)  
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-  **EPITROPH KEFALAIAGORAS/CAPITAL MARKET COMMISSION (CMC)**  
1 Kolokotroni and Stadiou Street, ATHENS - 105 62, GREECE  
*Member:* Dr Alexis PILAVIOS (Chairman)  
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*CESR'S contact person:* Ms Eleftheria APOSTOLIDOU (Director, Directorate of International and Public Relations)  
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-  **COMISIÓN NACIONAL DEL MERCADO DE VALORES (CNMV)**  
Paseo de la Castellana, 19, 28046 MADRID, SPAIN  
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*Telephone:* +34 91 585 1500 - *Fax:* +34 91 585 1675  
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-  **AUTORITÉ DES MARCHÉS FINANCIERS (AMF)**  
17 place de la Bourse, 75082 PARIS CEDEX 02, FRANCE  
*Member:* Mr Michel PRADA (President)  
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-  **IRISH FINANCIAL SERVICES REGULATORY AUTHORITY (IFSRA)**  
PO BOX 9138, College Green, DUBLIN 2, IRELAND  
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-  **FINANCIAL SUPERVISORY AUTHORITY**  
Sudurlandsbraut 32, 108 REYKJAVÍK, ICELAND  
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-  **COMMISSIONE NAZIONALE PER LE SOCIETÀ E LA BORSA (CONSOB)**  
Via G.B. Martini, 3, 00198 ROMA, ITALY  
*Member:* Mr Lamberto CARDIA (Chairman)  
*Telephone:* +39 06 847 7233 - *Fax:* +39 06 847 7470  
*CESR'S contact person:* Mr Carlo BIANCHERI (Director of International Relations)  
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-  **CYPRUS SECURITIES AND EXCHANGE AUTHORITY**  
Stasirratous 32, 1306 NICOSIA, CYPRUS  
*Member:* Dr Marios CLERIDES (Chairman)  
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*CESR'S contact person:* Mrs Liana C. IOANNIDOU (Officer)  
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*Web site:* <http://www.cysec.gov.cy>
-  **FINANSU UN KAPITĀLA TIRGUS KOMISIJA/FINANCIAL AND CAPITAL MARKET COMMISSION**  
Kungu iela 1, Rīga, Latvia, LV-1050  
*Member:* Mr Janis BRAZOVSKIS (Deputy Chairman)  
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*CESR'S contact person:* Ms Agnese JOELA (Foreign Relations Coordinator) and Ms Liga GANGE (Legal Adviser)  
*Telephone:* +371 777 4800 - *Fax:* +371 722 5755  
*Web site:* <http://www.fktk.lv>
-  **LIETUVOS RESPUBLIKOS VERTYBINIŲ POPIERIŲ KOMISIJA/LITHUANIAN SECURITIES COMMISSION**  
23 Konstitucijos Av., VILNIUS 2600, LITHUANIA  
*Member:* Mr Virgilijus PODERYS (Chairman)  
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*CESR'S contact person:* Ms Audrone RIMKUTE (Assistant to Chairman)  
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*Web site:* <http://www.lsc.lt>
-  **COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER (CSSF)**  
110, route d'Arlon, L- 2991 LUXEMBOURG  
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## 9.2 List of Members



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Krisztina krt. 39, 1013 BUDAPEST, HUNGARY  
*Member:* Mr István FARKAS (Chairman of the Board)  
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*CESR'S contact person:* Mr Árpád KIRÁLY  
(Head of International Affairs Department)  
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**MALTA FINANCIAL SERVICES AUTHORITY (MFSA)**  
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(Director General)  
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**AUTORITEIT FINANCIËLE MARKTEN (AFM)**  
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**FINANCIAL MARKET AUTHORITY (FMA)**  
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**COMISSÃO DO MERCADO DE VALORES MOBILIÁRIOS (CMVM)**  
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**AGENCIJA ZA TRG VREDNOSTNIH PAPIRJEV/SECURITIES MARKET AGENCY**  
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**NÁRODNÁ BANKA SLOVENSKA (NBS)/NATIONAL BANK OF SLOVAKIA**  
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**RAHOITUSTARKASTUS**  
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**FINANSINSPEKTIONEN**  
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**FINANCIAL SERVICES AUTHORITY (FSA)**  
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(International Strategy and Policy Co-ordination)  
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**EUROPEAN COMMISSION**  
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*Member:* Mr Alexander SCHAUB  
(Director General - DG Internal Market)  
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*CESR'S contact person:* Mr David WRIGHT  
(Director - Financial Markets)  
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## OBSERVERS



**FINANCIAL SUPERVISION COMMISSION**  
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*CESR'S contact person:* Ms Nina KOLTCHAKOVA  
(Director International Cooperation & Public Relations)  
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2, Foisorului Street, sector 3, Bucharest, ROMANIA  
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