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PUBLIC STATEMENT

THE SECOND MEETING OF THE MARKET PARTICIPANTS CONSULTATIVE PANEL

The Market Participants Consultative Panel held its second meeting on 13 January 2003 in Paris.

The discussion during the meeting was facilitated by Docters van Leeuwen, the Chairman of CESR. In his remarks, he thanked the panel for making time available for this work and for their contribution to the overall process of consultation conducted by CESR.

The discussion was mainly focussed on three different subjects: the recent activities of the Committee; the organisation of CESR work and priorities; the role and the organisation of the Panel.

1. Recent activities of CESR.

In the first part of the discussion, the Chairman of CESR reported on the major decisions adopted by the Committee in its last meeting (held in Athens on the 16th and 17th of December 2002) and on the meetings in which he has taken part.

In particular, the Chairman of CESR reported on:

- the approval of CESR's definitive advice on the first set of possible implementing measures for the Market Abuse Directive;
- the approval of an Addendum to the first Consultation Paper published in October on possible implementing measures for the Prospectus Directive;
- the results of a seminar held on the European Convention on Human Rights;
- the decision to organise two seminars on Investor Education and on Market Volatility;
- the approval of an increase to the budget of CESR by 33 % and the reinforcement of the structure of the secretariat, which will comprise of a number of persons ranging from 12 and 15 (including permanent and seconded staff);
- the decision to accept in 2003 new observers (securities regulators from Accession Countries);
- the decision on the organisation of some parts of the level 3 work, namely the process of monitoring the implementation by Members of agreed CESR standards.

The Chairman then reported on the EU-US dialogue on regulatory issues held at technical level, which took place during the visit of Mr. Roel Campos (Commissioner of the US SEC) to CESR in December 2002. CESR and the SEC decided to hold regular meetings (both at the level of Chairs and of staff) to discuss matters of common interests. This dialogue would not interfere with that held by the European Commission on issues of policy, such as the impact of Sarbanes-Oxley Act and the negotiations on trade screens. In particular, the two bodies agreed:

- on the need for conducting preliminary discussions and exchange of views on major regulatory changes;
- to facilitate the reciprocal exchange of information for enforcement purposes;
- to set up a benchmark of good regulation and supervision (CESR principles of enforcement on accounting are considered to be a good example in that area).



In the following discussion, the dialogue between CESR and the SEC was supported. It was suggested that CESR might assist the European Commission in its dialogue with the US authorities.

2. The organisation of CESR work and priorities.

In the second part of the meeting, the discussion focussed on the organisation of CESR work and its priorities for 2003.

On the organisation of CESR work, the Panel discussed the **work-plan** for 2003, based on the tables identifying possible areas of Level 2 work by CESR in the areas covered by existing Directives (Market Abuse), proposal for Directives (Prospectuses, Investment Services and Takeovers) or future proposal for Directives (Regular Reporting).

In terms of the content of the work conducted or to be conducted by CESR under the **Market Abuse Directive**, some members referred back to the discussion held during the first meeting of the panel, particularly in the context of safe harbours, the definition of inside information and the exemption from disclosing information; the Chairman of CESR recalled that these issues are already covered by the definitive CESR advice on market abuse, which was delivered under the strict conditions allowed by the Directive. As regards the future mandates, whilst it was supported the work on definition of accepted market practices, two member expressed concerns on the possibility to establish new safe harbours. Furthermore, support was given to the establishment of a list of insiders and persons having access to information (Article 6 of the Directive).

As regards the proposal for **Directive on Prospectuses**, one member was critical on the agreement reached on the language regime. The view was expressed that the treatment of third countries issuers should be conditional upon reciprocity.

In the discussion on the split between level 2 and 3 and the harmonisation of rules, the Chairman of CESR – in response to a question related to the benefits (in terms of reduction of costs) arising from the harmonisation of rules at EU level – argued that the desirable level of the harmonisation depends on the specific areas subject to regulation. Furthermore, he agreed that harmonisation should not be an end in itself, and it should not go further than was necessary to achieve the public goals and enable mutual trust to facilitate cross-border provision of services. The desired **level of detail** of regulation is influenced by different cultures and needs of market participants and regulators at EU level. These views were shared, in particular, by one member of the panel; another member reported that some parts of the industry complain about the excessive level of detail of some recent proposals made by CESR.

As regards the **consultation process**, the panel expressed the views that this process should be as wide as possible in order to collect various and different comments and experiences to have a real sense of the public interests of the overall market participants. CESR should make all efforts to expand the consultation to all market participants. In addition, the members of the panel supported the idea that the European Commission and CESR should publish a tentative work-plan on level 2 measures to be prepared in the coming 12/18 months. Such work-plan should be updated regularly.

Some members reported that the tight time-table given to CESR to provide its technical advice to the European Commission on implementing measures should not be at detriment of the quality of CESR's work.

One member supported the proposal made by some representatives of the industry to have a chance to comment once the European Commission has drafted the legal text on the basis of the CESR advice. The Chairman of CESR, however, warned that a new formal round of consultation would not add to the overall timing and efficiency of the procedure; public consultations should be conducted by CESR, as suggested by the Lamfalussy report. Concerns expressed by the industry may be better addressed through enhanced transparency of the activity of the European Securities Committee, allowing all interested parties to highlight inconsistencies or other problems to Members of the Securities Committee within the three months before the final approval of level 2 Measures.



As regards the **priorities** for future work by CESR, the panel took the view that CESR should concentrate its efforts in the current year in providing technical advice of good quality to the European Commission, under the existing and future mandates arising under the EU legislative initiatives (Level 2 measures). Priority should be given to those implementing measure which are deemed to be necessary for the entry into force of the directive.

The work committed to CESR by the informal Ecofin Council, held in Oviedo in April 2002 on the increased market volatility and the regulation of Hedge funds in Europe was not considered to be a priority for CESR in 2003, as well as that on the proposal for a take-over bid Directive, given the fact that political agreement has not been reached yet.

The Chairman of CESR reported that the Committee will probably take the decision on the organisation of the level 2 work on the **ISD** at its next meeting of March. Nonetheless, CESR is studying how to organise such a work. On the basis of three macro-areas on which CESR is sought to deliver its technical advice according to the proposal, a clear majority among the member of the panel expressed the preference for this sequence of priorities:

- 1) rules on market structures, including best execution and transparency;
- 2) rules on cooperation and relations between competent authorities for enforcement powers;
- 3) rules on the duties for the intermediaries.

Furthermore, one member of the panel asked whether CESR would be entrusted in discussing and conducting investigations on areas of investment business on which settlements were reached in the US, notably the securities analysts sector. This area was considered to be of particular interest in case of US investment firms providing business in the EU (e.g. IPOs targeted to the EU financial market). The Chairman of CESR reported that a *tour-de-table* on this specific issue was held during the last meeting of CESR; the result was that there are no reasons to presume, at present, that the practices which lead to settlements in the US with the judicial authorities are of common use in the EU markets. Nonetheless, CESR will monitor developments in this area.

3. The role and the organisation of the Panel.

In the third part of the meeting, the discussion focussed on the role of the Panel and the organisation of its work.

In response to a specific question on the objectives and expectations from the panel, the Chairman of CESR reaffirmed that the panel should:

- a) provide “early warnings” of market developments, to which CESR itself is not paying due attention, or new elements for preliminary discussion by the Committee;
- b) overseeing the overall functioning of CESR and the eventual deficiencies in the network of regulators;
- c) advice CESR in establishing its priorities for its work and convey messages on the work CESR itself has to fulfil: members of the panel have been asked to express their opinions at the beginning of the process, instead that at the end;
- d) finally, advise on current market issues.

As regards the results of the meetings, it was agreed to make them public with clear indication of opinions and without attributing these opinion to the panel as a whole if it is not the case.

In terms of the organisation of the next meeting, following the request of some members of the panel, it was agreed that the Secretariat of CESR will provide an annotated agenda in due advance, raising some questions to which the opinions of the members of the panel are sought; some additional background information will be provided by the Secretariat, including the text of relevant documents necessary to inform the discussion. The discussion of the updated workplan of CESR should always be part of the agenda of the Panel.

Next meeting



It was agreed to hold the next meeting of the Panel in Paris, on Thursday 12 June 2003. If necessary the Chairman of CESR might convene an additional meeting of the Panel before that date.

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The members of the CESR Market Participant Consultative Panel are:

- Pr Luis Miguel Belez, Consultant of the Executive Board, Banco Comercial Português;
- Dott Salvatore Bragantini, CEO, Centrobanca S.p.A.;
- 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 P.P.F. de Vries, Director, Association of Shareholders, Vice-President, Euroshareholders;
- Mr Lars-Erik Forsgardh, 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 Mariano Rabadan, Chairman of the Spanish Association of Investment and Pension Funds (INVERCO);
- Pr Dr Emmanuel D. Xanthakis, Non-Executive President, Marfin Bank and Marfin Portfolio Investment Company.