



Date: 25 March 2004
Ref.: CESR/04-102

PUBLIC STATEMENT

THE FIFTH MEETING OF THE MARKET PARTICIPANTS CONSULTATIVE PANEL

The Market Participants Consultative Panel held its fifth meeting on 11th March 2004 in Paris.

The discussion during the meeting was facilitated by the Chairman of CESR. In his opening remarks, he thanked the members of the Panel for their contribution to the overall process of consultation conducted by CESR and he observed that in the coming months Europe will face a high concentration of relevant institutional events: the election of the new European Parliament, the appointment of the new Commission, the discussion for the new Constitution.

The discussion was mainly focused on two different subjects: corporate governance and the post-FSAP.

1. Corporate governance

Following presentations by Lars-Erik Forsgardh (presentation is enclosed) and Peter Paul de Vries, the members of the Panel discussed the regulatory approach to corporate governance in Europe. This discussion serves the purpose of helping CESR in highlighting priorities for the Post-FSAP, in particular as possible response to the Parmalat scandal, and the work that CESR is likely to conduct under the Action Plan on Corporate Governance adopted by the EU Commission.

The Action Plan on Corporate Governance was supported by the members of the Panel. However, in terms of reaction to the Parmalat case, the members of the Panel argued that frauds can never be avoided and prevented and that regulators should refrain from giving the impression that any future regulatory interventions might prevent the occurrence of new frauds.

The objective of having a single European code of corporate governance was shared, given the benefits that this will bring particularly for large companies that actually have to comply with various national codes. However, given the expected relevant amount of time requested to achieve this objective, it was suggested that a more practical approach would consist in establishing a common framework of principles, mandatory at European level and enforceable by competent authorities. This framework should be complemented, at domestic level, by company laws and codes of corporate governance, which may differ in terms of internal structures, whilst being consistent with the general principles. The content of the various codes of corporate governance adopted at European level should be coordinated within an European Corporate Governance Forum. The recommendations contained in the code would have voluntary nature and would follow the “comply or explain” principle. The principles contained in the common framework should be selective, based on the OECD principles (currently under revision) and address, as a matter of priority, issues related to transparency and shareholders’ protection (including voting rights and shareholders’ meetings); roles of directors, executives’ remuneration do not represent priority issues.

Competent authorities will have to check: the existence of a code at national level; the consistency between the code and the framework of principles; the regular update of the content of the code;



compliance by companies with the principles and the code (one member of the Panel suggested that compliance with the code should be checked by competent authorities).

Members of the Panel considered that these interventions should be given high priority in the Community agenda. It was also noted the dynamic nature of the process of corporate governance, which therefore needs adequate updating, and its cultural dimension, with particular regard to the more active role and responsibility of shareholders (both individual and institutional investors) in monitoring the performance of the companies.

2. Discussion on the Post-FSAP

Based on the initial activity of the four Forum Groups established by the European Commission, members of the Panel discussed the priorities after the Financial Services Action Plan. The Chairman of CESR presented the main conclusions of a recent informal meeting of CESR devoted to discuss the same issues. The discussion was divided in three parts.

In the **first part**, the priorities for the Post-FSAP were discussed. CESR presented the initial thoughts of the Committee. From a general perspective, three main objectives should drive the regulation: i) to keep the trust of investors and eventually, in case of market failures, to restore such confidence, ii) to promote the competition among market players, and iii) to favour the integration of European financial markets. In order to achieve these objectives, regulation should go in parallel with a sound knowledge of market practices; market trends should be carefully monitored by regulators. Furthermore, before introducing new regulation, impacts on regulated entities should always be assessed. More attention should be paid to calibrate the interventions according to the needs of different market participants (namely the needs of retail sector vs. wholesale business) and those of financial products different from equities (e.g. bonds, derivatives). Concrete possible areas of future attention by European regulators include the following: strengthening statutory audit function; corporate governance; primary market practices, with particular regard to conflicts of interest, sophistication of products and retail participation in the distribution process; clearing and settlement; credit rating agencies; hedge funds.

Members of the Panel considered that before launching new regulatory initiatives, implementation of the Action Plan should be ensured. Members of the Panel vigorously complained on the gap between progress made at EU level in adopting new laws and their concrete implementation in Member States, where little is perceivable. In particular, it is necessary to highlight which immediate and efficient actions may be taken against the Member States which are not compliant with community law.

Members of the Panel expressed their support for the Lamfalussy procedure and welcomed the recent results of CESR, with particular regard to transparency of its process and the establishment of an effective network; however, some concerns were expressed on the excessive level of detail of some regulatory interventions. It was noted that there is a trade-off between the level of detail and the legal risk; the latter, however, should be ideally confined within an acceptable range, given certain expectations of predictability of decisions taken by regulators.

In the **second part**, the discussion focused on how to improve the functioning of CESR in order to better perform its tasks.

CESR presented the initial thoughts of the Committee, which include: strengthening the functioning of network at different levels (e.g. by improving exchange of personnel, joint investigations and training sessions). On the issue of implementation, the establishment of monitoring groups for specific aspects of the single market could be explored. On more centralised functions, CESR-Pol and CESR-Fin should be encouraged to continue their work on the creation of databases of national regulatory decisions; both operational groups should devote more efforts in discussing individual cases to share supervisory experiences and draw some common conclusions. Finally, CESR might explore more enhanced issues such as "no action" letters and the decision-making capacity of the network.



As regards the “level 3”, it was recalled the preliminary results of the activity of the Review Panel in the field of implementation of CESR Standards. The Panel also discussed the role of CESR in the overall “Level 3” of the Lamfalussy procedure and, in particular, a possible role to strengthen the cooperation and coordination between CESR members including a “mediation mechanism” for solving problems in the eventual conflicts in day-to-day decisions. A consultation paper on the role of CESR at “level 3” is expected to be published by CESR in April.

Members of the Panel highlighted the following two areas for further improvements: cooperation and consistent implementation of CESR decisions. As regards cooperation, it was suggested that MoUs for cooperation between regulators and supervisors (in particular those concerning the cross-border activities of pan-European players) should be based on common and consistent principles. As regards the consistent implementation of CESR decisions, support for expressed for an internal “mediation mechanism” to facilitate solution of divergent views between CESR members.

In the **third part**, the discussion focused on the evaluation of the adequacy of the regulatory and supervisory systems at EU level and possible future ways to better respond to challenges posed by the single market. The Chairman of CESR introduced the point, by proposing a methodology for any future assessment (the presentation is enclosed).

In terms of priorities, members of the Panel indicated that the finalisation of an integrated regulatory framework and the measurement of the degree of integration of the market come before the establishment of a supranational supervisory entity; nonetheless the initiative of CESR to conduct an in-depth analysis was strongly supported. Some members of the Panel even see here a matter of urgency. It was also noted that market participants might have different views, since interests of pan-European financial players differ from those of small entities which operate mainly at domestic level. The demand of entities operating in all or most EU Countries is to reduce the costs of compliance: one single set of rules as well as one reporting mechanism would represent an ideal scenario. However, this should not prejudice the existence of national authorities, which are closer to investors needs.

3. Other issues.

3.1. The transatlantic relationship: the dialogue with the US SEC

The members of the Panel were informed on the recent contacts between CESR and the Chairman of the US SEC. The dialogue with the US SEC is based on four different layers: a) the first refers to periodic meetings to discuss market trends and evolutions; b) the second is the intensification of reciprocal consultations before the adoption of new regulations and main policy actions; c) the third refers to improvement in cooperation arrangements, including the signature of a “transatlantic MoU” based on the existing CESR Multilateral MoU; d) the fourth refers to the technical dialogue on specific issues (e.g. credit rating agencies, hedge funds, investigations on mutual funds). The first practical example of this cooperation was the invitation to the Chief Accountant of the SEC to attend the latest meeting of CESR-Fin. Sarbanes-Oxley and its impact on the EU companies is not part of this dialogue. The US CFTC recently expressed intention to conduct similar dialogue with CESR.

Members of the Panel acknowledged these results.

3.2. Financial markets conditions

CESR has been asked to provide its contribution to the analysis conducted by the Economic and Financial Committee on the conditions of the European financial markets. Members of the Panel acknowledged the contribution of CESR to the next financial Stability Table of the EFC. Members of the Panel noted that few IPOs have been announced recently, but none was made so far. It was also noted that excessive level of regulation might represent a barrier to access the capital markets by small issuers, but that this regulation protect investors by preventing that any companies (in particular those which are not fit to) will access the markets.



It was also discussed the modalities and means by which members of the Panel will in the future contribute to CESR analysis. CESR will aim at producing more data taking into consideration different market structures; members of the Panel will be asked to highlight consequences of these data and to alert on major risk factors.

3.3. Report on recent events and on future CESR activities.

In the second part of the meeting, the discussion concentrated on the organisation of CESR work and its priorities for 2004. CESR's work-plan is mainly based on the delivery of technical advice to the European Commission on implementing measures under the revised ISD directive, the transparency Directive, the take-over bid Directive. CESR is also beginning its work in the field of investment management. The report on recent CESR activity as well as the work programme for 2004 did not raise any objections from the members of the Panel.

The members of the Panel were also informed of the cooperation established with the other level 3 Committees, operating in the banking (CEBS) and the insurance (CEIOPS) sectors. An initial meeting between the three Chairmen and the Secretaries General of the three Committees was held in Amsterdam.

The members of the Panel congratulated CESR for the quality of the new Web site.

3.4. Partial renewal of the composition of the Panel

The composition of the Panel will be enlarged to 15 members, starting from the next meeting in June. New members should be appointed by CESR at one of its next meetings, having regard to the need for representing the following sectors (issuers, accounting/auditing, exchanges) and the markets of the accession countries. The existing members of the Panel will remain in charge for 2004; then, starting from 2005 three blocks of members will be selected on a random basis for partial renewal in the following years.

Next meetings

It was agreed to hold the next meetings of the Panel in Paris, on 10th June 2004 and 10th November 2004.

A series of issues have been raised for discussion during the next meeting and in particular, follow-up to the discussion on the post-FSAP, a policy discussion on credit risk transfer, the consultation practices of CESR, hedge funds, financial analysts and credit rating agencies.

* * *



The members of the CESR Market Participant Consultative Panel are:

- Pr Luis Miguel Beleza, 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, 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 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.



Presentation by Lars-Erik Forsgårdh

Corporate Governance

A presentation to
CESR Market Participants Consultative Panel
11th March 2004

Lars-Erik Forsgårdh

Aktiespararna
Swedish Shareholders Association

2004-03-09

Definitions of Corporate Governance

- Corporate Governance is the system by which corporations are directed and controlled - Cadbury 1992
- A corporate governance code is a non-binding set of principles, standards or best practices, issued by a collective body, and relating to the internal governance of corporations - Weil, Gotshal & Manges 2002

Aktiespararna
Swedish Shareholders Association

2004-03-09

Corporate Governance objectives

To improve the efficiency and confidence in the companies and the market and thereby in the end increase shareholder value.

40 national codes

- UK - Cadbury 1992, Greenbury 1995, Hampel 1998, Higgs 2003
- Swedish Shareholders Association 1993
- France 1995 - summary of previous codes 2003
- Millstein report OECD 1998
- Euroshareholders 2000
- Denmark Nørby report 2001
- Germany Cromme code 2002
- Netherlands Tabaksblat code 2003
- Norway and Finland 2003
- Sweden 2004

OECD

- First set of principles 1999
- Draft revised text January 2004
- Identification of common elements covering five areas:
 - The rights of shareholders and key ownership functions
 - The equitable treatment of shareholders
 - The role of stakeholders
 - Disclosure and transparency
 - Responsibilities of the board

European Union

- Weil, Gotschal & Manges report - "the codes are remarkable in their similarities"
- Winter report - the differences in the national legal systems too big to create a EU code
 - "effective harmonising of corporate governance codes while leaving company law untouched is not feasible"

European Union Commission Action Plan on Company Law and Corporate Governance

- Annual Corporate Governance Statement
- Information about the role played by institutional investors
- Access to information
- Other shareholders' rights
- Shareholder democracy
- Board composition
- Directors' remuneration
- Coordinating corporate governance efforts of Member States

What should EC/CESR do in the field of Corporate Governance?

- Define a framework of minimum requirements and coordinate with OECD principles
- Establish national codes within this framework
- Independent self-regulating bodies
- European Corporate Governance forum for development and coordination
- National authorities responsible for monitoring observance



Presentation by Arthur Docters van Leeuwen



Committee of European Securities Regulators

Future strategy for CESR

CESR Market Participants Consultative Panel
Paris, 11 March 2004

Arthur Docters van Leeuwen

1



Three questions

- What are reasonable demands on the European level?
- How to meet these demands?
- What structure(s) will fit CESR best?

2



What is asked?

- Convergence in regulation =
convergence in supervision =
convergence in enforcement.
- Una voce particolare (one voice)
- Cross border / cross sector
- Crisis
- Other?

3



How to meet the demands? One answer or one voice? (1)

1. Exchange of information/monitoring on a European level.
2. Co-operation (bi-/multilateral, coordination, division of tasks, alliances, mergers)
3. Decision making
 - database interpretations
 - standards
 - specialised groups
 - "mediation"
 - complaint mechanism
 - not 27 co-ordinated decisions but one?

4



How to meet the demands? One answer or one voice? (2)

4. Relations to other regulators
 - in Europe
 - other continents

5. What about crisis management ?
(how relevant is this?)

5



Structures (1)

- A. (embellished) network
- B. new entity
 - not 27 co-ordinated decisions, but one
 - fits better in EU structure
 - better recognition outside Europe
 - etc.
- A. institution like ECB
 - how much integration (securities, credit, insurance) really needed in the near future?

6



Structures (2)

Two remarks (in advance):

1. We need not to change (if we do't want this) the way we decide (consensus)
2. It is not a question of network or a new entity. They can very well co-exist

7



Political Environment

- Approval of EC,EP, the Council
- EP appears to be in favour of wider use of regulatory agencies
- Commission would probably restrict the competences to technical matters
- Position of the Council is not clear

8



Next steps: reconnoitring the field.

Small group of chairs. Tasks:

- Discussion with
 - industry
 - European commission e.a.
 - journalists
 - other E-VIPS
- Report June / September