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## European Financial Integration: Progress & Prospects

### European Commission Conference

Comments by Fabrice Demarigny, Secretary General of CESR

Session on Securities, Trading & Investment (June 23, 2004)

Ladies and gentlemen,  
Dear Chairman,  
Dear members of the Panel,

Let me start by thanking the European Commission for organizing this very timely conference and for giving CESR the possibility to describe its experience under the FASP and also to comment this very rich and accurate report and discussion. By doing so I will try to deliver some views on what should be the content and profile of the next phase.

#### 1) Have we made progress?

If we read the report of the Forum group on Securities, prepared for this conference, and we listen to the commentators since the beginning of this event, the answer seems to be yes. In short:

- The Union has succeeded in renewing almost all the blocs of securities legislation in the EU
- National regulators know each other better and trust each other increasingly
- CESR allows them to work in the same direction
- The EU is not anymore a black box. The open and transparent manner of working and the consultation policy promoted by CESR is now the rule.
- The Lamfalussy process at Level 1 and Level 2 is working: it produce proper legislation and well though implementing measures.

#### 2) Do we need to do more?

This is the key question of the report of the Forum Group.

Has regards the regulatory substance, we consider that there are some areas which are not completely new issues, but which are of complementary nature to those in the current FSAP with a view to the completion of the Single Market in financial services. Therefore in these areas some regulatory measures are necessary to achieve for further integration, particularly by abolishing remaining barriers. These measures should be considered as a natural component of the FSAP, since they are characterised by the same spirit of intervention.

a) The first intervention should be on **clearing and settlement**. This is also identified in the Forum Group report. The Giovannini Group, in its two reports, has already showed that securities clearing and settlement systems at European level are far from being integrated. This leads to costs for finalisation of cross-border transactions much higher than those applicable to mere domestic transactions, which represent an obstacle to the integration of markets. The Commission recently published a communication in which it proposes a future EU directive in this field; we support this proposed way forward. The standards on securities clearing and settlement systems that we have



been preparing jointly with the ESBC and which are now in the phase of being finalised, will represent a valid contribution to the establishment of a sound pan-European regulatory and supervisory system.

b) The second intervention that we suggest is in the area of **corporate governance**, which is also highlighted by the Forum Group report. Some measures have already been included in the Commission *Action Plan on Company Law and Corporate Governance*, some others might be further considered as response to recent corporate scandals that occurred in Europe. We are more open minded than Professor Rudiger von Rosen and believe that some common denominators for European company law are necessary. In particular, this common basis should be composed of principles of general application, valid for many different systems of corporate structure across Europe, and should focus on shareholders' rights. Attention should also be paid to the enforcement of these rules. Similarly, forms of intervention to strengthen the internal and external systems of control on listed companies would be necessary tools to restore the confidence of investors. In this context, CESR supports the current proposal for upgrading the 8<sup>th</sup> Company Law Directive on auditing. CESR stands ready to provide the same contribution as it is doing on the accounting issues.

c) A third intervention that we propose, as stated yesterday in the session on Asset Management, is the upgrading of the **UCITS Directive**. From the positive experience of the adoption of the implementing measures under the first two directives following the Lamfalussy process, and from our initial activities in the field of investment management, we believe that the sector of asset management would sensibly benefit from adjusting the UCITS Directive to the Lamfalussy process. The revision of the UCITS Directive should also ensure full consistency with the rules applicable to the provision of investment services.

As regards new issues, in general, we suggest that any further legislative measure proposed by the Commission should follow the Lamfalussy process. This will allow the regulatory system to exploit the full flexibilities offered by the process to address, in particular, the requirements of financial innovation and market changes.

We would also like to raise the specific point of articulation between sectoral and horizontal directives in the field of customer protection. Past (E-Commerce Directive) and recent experiences (proposed Regulation on Consumer Protection Cooperation and proposal for the Directive on Unfair Commercial Practices) show how difficult and problematic it is to extend general provisions for consumer protection purposes to the financial services sector where sectoral directives already provide for corresponding rules. Therefore, we suggest that any further intervention on investor protection is conducted with specific attention to the peculiarities and existing framework of financial services.

### **3) Do we have the necessary powers to implement the new legislation?**

According to the Forum Group report, the spot light is shifting on implementation.

We also believe that better implementation and enforcement of all EU measures that have been adopted and still have to be implemented nationally are of top priority. CESR, as the European network of competent authorities that are in charge of the daily national operation and enforcement of these measures, considers that the full effects of these measures at European level will only be achieved if consistency is ensured in the way the operation of these measures takes place at Member States level. Convergence of both regulatory and supervisory practices by CESR Members is at the centre of our attention. We recently published a consultation paper on "*The role of CESR at 'Level 3' under the Lamfalussy process*" in which we put forward our ideas and suggestions on how to improve this convergence. We can only welcome the remarks made in the Forum Group report on Level 3. We will also pay attention to the eventual bottlenecks in the implementation phase emerging from the demanding timetable for industry market players for the implementation of several EU measures at the same time.

We consider that an efficient network cannot be established unless the same powers are granted to all competent authorities across the EU. This common basis should cover the powers to supervise, investigate, sanction and cooperate. Unless all competent authorities are put on equal footing an effective cooperation can not take place; this might materially endanger the way in which



supervision of business is carried out by competent authorities. We acknowledge that great progress has been made recently in providing the competent authorities with the same powers, in particular under the Market Abuse Directive; however, we have some concerns on the way these measures will be effectively implemented by Member States.

We also consider that, within their respective national Constitutional framework, Member States should grant competent authorities with the same necessary rulemaking powers to issue binding rules. This will facilitate further coordinated work with respect to regulatory convergence and allow the flexibility, which is called for in the Lamfalussy Report, to adapt any subsequent changes. At the time when all Member States are transposing into national law the FSAP directive, there is an unique opportunity to achieve convergence in this area.

More broadly, we suggest that all various legislative measures in the securities field markets of FSAP, which include in particular Market Abuse Directive, Prospectus Directive, Transparency Obligations Directive, Markets in Financial Instruments Directive, and the following ones be brought together in one codification, which will have the benefit of clarity for readers, consistency, accessibility and immediacy.

In the light of possible evolutions of various different models of market consolidation/integration, the EU legislation should also explore the possibility to allow competent authorities to interact among themselves on the different forms of co-operation. This might include different models and agreements of sharing of supervisory competences among competent authorities, which are not allowed under the current regulations. Furthermore, it should be further explored whether it was possible in the EU to give regulators the power available in the US to settle enforcement cases. Finally, co-operation between competent authorities (home/host) should also refer to handling and channelling customers' complaints.

On these aspects, CESR will present in autumn of this year its analysis on the regulatory architecture on the basis of the work currently conducted by our "*Himalaya Task Force*". We are currently investigating the degree of financial integration and we have started thinking about the problems that we have to solve and the instruments that we need to have available to solve. This analysis will be reflected in an analytical paper that will be published in due course.

My last remarks before concluding refer to the broader international context in which EU matters should be necessarily framed. European actors are playing in an international context and have to compete with other players. We all have to ensure that this game is played with rules that at the same time do not disadvantage our players and attract other players to Europe. These rules should therefore be based on the highest principles of regulation established by the overall international financial community. CESR will contribute to this objective by strengthening its contacts and regulatory dialogue with its overseas interlocutors, and in particular with the US Authorities.

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To conclude, one can easily say that we have definitively left the period when Europe was simply a "patchwork" of national financial markets doing some business with each other, but we have not yet reached the point of a fully integrated EU financial market. We are in between. The FASP directives have not yet produced their effects. The first one will start to be applicable in October this year. However, history shows that when more freedom and legal certainty is given, market players move fast to take profit of the new opportunities. This should be welcomed. When this happens, and only then, regulators should be able to adapt their regulatory and supervisory tools to this new environment in accordance with the speed of integration of the market. This is the challenge for the next 5 years.