



Date: 13<sup>th</sup> September 2004  
Ref: 04-456

On-shore Europe  
The regulation of Financial Markets by Arthur Docters van Leeuwen,  
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delivered by Wim Moeliker, member of the CESR-secretariat  
13 September 2004, Hilton Conference Centre, St Julians, Malta

## INTRODUCTION

Good morning Ladies and Gentlemen,

As a member of the CESR-secretariat I am honoured and grateful to the organisation for being here to present to you, on behalf of the CESR Chairman, who is not able to be at this conference today, his speech about the regulation of Financial Markets. In the time allotted to me in this programme, I will present:

- an overview of current CESR activities mainly at level 2 with some remarks about our activities at level 3;
- CESR's vision on the work to be done after the completion of the current Financial Services Action Plan (FSAP) and;
- Our work in what is called the Himalaya Task Force.

Since Malta was not part of the “club of securities regulators” at the time CESR was created, allow me to explain very briefly the fundamentals of our independent committee of securities regulators. Since 2001 CESR acts as an official advisor to the European Commission within the famous four levels of the Lamfalussy-framework.

- This approach implies drafting of EU-framework directives or Regulations by the well-known EU-institutions (Commission, Parliament and Council) at *level 1* and elaborating technical details by the Commission in so-called implementing measures at *level 2*. This is the area where CESR has its role as an official advisor. CESR prepares its advice for the Commission each time on the basis of a specific mandate, indicating the scope and timelines for the advice.
- *Level 3* covers strengthened co-operation between regulators and includes the preparation of standards, recommendations and guidelines in areas not covered by EU law and where CESR see this fit. We can do this on our own initiative without any mandate from the Commission. An important feature for CESR in all our activities at levels 2 and 3 is our obligation to consult widely and in a number of ways. You may have noticed that we take this obligation very seriously!
- *Level 4* in the Lamfalussy-framework is strengthened enforcement of Community rules which is the domain of the Commission.

## OVERVIEW OF CURRENT ACTIVITIES AT LEVELS 2 AND 3

CESR currently has five mandates from the Commission in four different areas of work: Markets in Financial Instruments Directive (MiFID) (two mandates), Transparency, Equivalence of Accounting Standards and Credit Rating Agencies). I will leave aside here the level 2-work of CESR in the areas of the Market Abuse and the Prospectus Directives which has been completed.



- **Markets in Financial Instruments Directive**

Since 2003 a lot of our resources have been dedicated to the preparation for technical advice on possible implementing measures concerning **the Markets in Financial Instruments Directive** (MiFID, also known as: ISD2) that was adopted in April of this year. This first mandate from the Commission in this area set the deadline for CESR's technical advice at the end of January 2005. Given the amount of work to be done, CESR established three Expert Groups to deliver its advice. The three expert groups are:

- **Expert Group on Markets**, chaired by Karl-Burkhard Caspari, Vice-President of the German BaFin, covers the subjects relating to the admission of financial instruments to trading, pre- and post-trade transparency requirements for multilateral trading facilities (MTFs) and regulated markets, and post trade disclosure by investment firms.

- **Expert Group on Intermediaries'** issues, chaired by Callum McCarthy (Chairman of the UK FSA) covers the areas related to: organisational requirements, conflicts of interest, conduct of business obligations when providing investment services to clients, best execution and client order handling rules.

- **Expert Group on Cooperation and Enforcement** issues, chaired by Michel Prada (President of the French Securities Regulator, AMF) covers the mandates related to: transaction reporting, co-operation between competent authorities and exchange of information.

Formal co-ordination among these groups, in addition to numerous bilateral contacts, is organised by a Steering Group made up of the chairmen of each of the Expert Groups, chaired by the CESR Chairman and supported by the Secretariat.

A consultation paper has been prepared and was published in June with the purpose of seeking comments on the draft technical advice that CESR proposes to send to the European Commission on the implementing measures set out in this first mandate.

Given the extensive number of possibilities in the MiFID-Directive to elaborate technical details at level 2, CESR received at the end of June 2004 a second mandate from the European Commission with a deadline to submit its advice on this second mandate by the end of April 2005. This second mandate will also lead to a second consultative paper. Meanwhile, the issues covered in this set have been divided among the Expert Groups on Markets and on Intermediaries.

When completed, CESR's advice on both the first and second mandates will assist the European Commission in developing a legal text, known under the Lamfalussy legislative process as level 2 implementing measures.

- **Transparency Directive**

In June 2004, the European Commission published its first set of provisional mandates requesting CESR's advice on possible technical measures to implement the Transparency Directive. This Directive aims to harmonise transparency requirements with regard to information about issuers whose securities are admitted to trading on a regulated market. The mandate in this area covers, among others, the following issues: the disclosure of information about major holdings; dissemination of regulated information and procedural arrangements by which an issuer may elect its home Member State.

CESR has been asked to submit its advice by 30 June 2005 and the entire package of measures must come into force by the end of 2006. CESR's advice is prepared by an Expert Group chaired by Andres Trink, Chairman of the Estonian Financial Supervision Authority.

- **Implementing measures to establish equivalence between third countries GAAP and IAS/IFRS**



Following the receipt of a mandate from the European Commission at the end of June 2004, CESR began its work to consider the equivalence between certain third countries' GAAP and IAS/IFRS and to this end launched a call for evidence for interested parties. This mandate will be taken forward by the operational group CESR-Fin, chaired by John Tiner of the UK FSA, which will prepare through its two sub-committees on endorsement (SISE) and enforcement (SCE), CESR's advice.

As a first step in developing CESR's final advice, CESR will publish a concept paper which will establish the principles upon which equivalence could be assessed and the methods and criteria to be used for the technical assessment of equivalence. This will be followed by a review of US GAAP, Canadian GAAP and Japanese GAAP on which CESR will give its advice to the European Commission.

- **Credit Rating Agencies**

After several corporate incidents in the global market place and a call by the European Parliament, CESR received, at the end of July, a mandate from the Commission with a view to providing technical advice on possible legislative measures for credit rating agencies, if considered appropriate. This mandate covers: potential conflicts of interests with rating agencies, transparency of methodologies used, access to confidential information and the issue of competition in this market segment. On the basis of this mandate, CESR issued a call for evidence which resulted in a number of responses from the industry, available on the CESR website, and generally welcoming the initiative of the Commission to study the role of these players. Given the fact that rating agencies operate on a global scale and the work already done in this area (in particular by IOSCO and the SEC), CESR is encouraged to take this into account when developing its views. This work is carried out by the Expert Group on Rating Agencies, chaired by Ingrid Bonde, Director General of the Swedish Finansinspektionen, in the preparation for a consultative paper which is expected to be published at the end of this year.

### **The activities of CESR at level 3**

Given the time constraints, I will limit the overview of level 3 activities by CESR to two areas, Investment Management and Clearing & Settlement.

- **Investment Management**

In December 2003, CESR decided to establish a provisional Expert Group on Investment Management, chaired by Lamberto Cardia (Chairman of the Italian CONSOB) and has worked on drawing up its specific mandate based upon the Consultation Paper "The role of CESR in the regulation and supervision of UCITS and asset management activities in the EU". Note that this is a level 3 mandate, not coming from the Commission as the current UCITS-Directive hardly leaves room for level 2 measures. The short-term priority of the newly formed Expert Group will be to focus on ensuring the single market for investment funds is fully functional.

- **Clearing and Settlement**

In clearing & settlement, CESR (in cooperation with our ESCB colleagues) is, after a number of years of work and several consultations of the industry, about to finalize the CESR/ESCB Standards for securities clearing and settlement systems in the European Union. This work is based upon the world-wide CPSS-IOSCO recommendations for securities settlement systems, but adapted to the EU-environment. CESR and the ESCB intend to publish the final version of the Standards in the autumn. This will be accompanied by a summary of the responses and a feedback statement indicating how we have responded to the comments made by market participants during the consultation. One should, however, keep in mind that in areas of clearing & settlement where a legal binding effect at the level of EU Community law is needed, this can only be realised at level 1. In this respect we look forward to the follow-up that will be given by the EU Commission to its Communication Paper in this area.

### **THE WORLD AFTER FSAP**

In addition to the substantial legislative efforts by the Commission and other stakeholders over the last years, CESR's activities at levels 2 and 3 as presented here will contribute to the nearing completion of the current FSAP, but the question is; what will be next? Of course, this will be for the new Commission to decide, but CESR has already developed ideas and will continue to deliver input



to the discussion. In terms of methodology on how to best approach the post-FSAP, CESR considers that any further regulatory intervention should be based on an analysis of the results achieved so far by the FSAP on the integration of the European financial markets. Therefore, we welcome the initiative of the Commission to set up a system whereby the scale of this integration is periodically monitored. Without measuring the effects of the different pieces of regulation that have been adopted so far, some of which have not yet been implemented by Member States, we would not be able to assess where, how and to what extent further interventions are needed.

Having regard to objectives underpinning the original FSAP, 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.

The first intervention in our opinion should be on clearing and settlement. 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 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 and could in a later stage serve as a basis for level 2 measures.

The second intervention that we suggest is in the area of **corporate governance**. 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 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 in CESRs view focus on shareholders' rights.

A third intervention that we propose 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.

Furthermore, CESR considers that new legislation should aim at progressively dismantling inconsistencies in rules covering the products that serve the same economic functions across different market sectors which inhibit a real level playing field. An example may be perceived in asset management functions performed by insurance companies, pension funds, asset management companies and investment firms, which are all subject to different regulations at the moment.

In addition to the suggested improvements in terms of substance, I would also like to draw your attention to certain aspects concerning our organisation that might need to be addressed to ensure some operational improvements to CESR's network as regards its capacity to co-ordinate the implementation of EU law better. CESR has tabled the following five suggestions to the Commission:

1. We 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 will only be achieved if consistency is ensured in the way the operation of these measures takes place at Member States level.
2. 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, effective cooperation can not take place; this might materially endanger the way in which supervision of business is carried out by competent authorities.



3. We also consider that, within their respective national Constitutional frameworks, Member States should grant competent authorities with the same necessary rulemaking powers to issue binding rules, which is currently not the case. This will facilitate further coordinated work with respect to regulatory convergence and allow the flexibility, which is called for in the Lamfalussy Report.
4. The great variety of measures on the cooperation duties of competent authorities is considered a patchwork leading to major inconsistencies and does not allow a smooth and efficient cooperation between competent authorities. It would in our opinion be necessary to consolidate all texts affecting cooperation into one single new text which should apply to all circumstances where cooperation has to take place.
5. 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 may have the benefit of clarity for readers, consistency, accessibility and immediacy.

#### **HIMALAYA TASK FORCE**

In order to go one step beyond our current post-FSAP thinking as just explained to you, a so-called Himalaya Task Force was established by CESR earlier this year with the purpose of establishing an analytical work-plan to provide answers to the future regulation of securities markets in Europe in three to five years time. In this Task Force we address three questions from a functional point of view which have been identified as key:

- 1) What are the reasonable demands in relation to the regulation of securities markets made on CESR at EU level? What can the industry (and other stakeholders) reasonably expect from us?
- 2) What are appropriate answers to these demands (within or beyond the current legal framework)?
- 3) Are structural changes to CESR necessary?

The Task Force is guided by the objectives of the Lisbon European Council and by the need to evaluate the adequacy of the regulatory and supervisory tools in the Single Market. In the light of possible evolutions of various different models of market consolidation/integration, the EU legislation should, in our view, explore the possibility of allowing competent authorities to interact among themselves in 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. The main driver in this discussion should, in our view, be the efficiency of supervision. In undertaking this work the Task Force will establish a set of principles that might usefully contribute to how regulation of securities markets in Europe should develop in the future. CESR will present its analysis on the basis of this work in the autumn.

#### **CONCLUSION**

In conclusion, where will all this bring CESR in the next years? All involved in the EU-law-making process, in particular the EU Commission, have made an outstanding job with the completion of the FSAP at level 1. At this stage, it is up to the Members-States and their regulators to implement the adopted measures in an adequate way. I have explained to you that according to CESR there remains, in the post-FSAP period, areas where further work needs to be done either of complementary nature (clearing & settlement, corporate governance and upgrading the UCITS Directive) or rather new (a consistent cross-sectoral approach in the area of investor protection). Furthermore, operational improvements may need to be considered to improve the efficiency of our network. In my view, the network is a golden tool in the application of the Lamfalussy framework. If CESR will be allowed by its political masters to draft and implement an adaptive strategy to respond to future market developments, based on a proper analysis of what is needed, I am confident that this will enable CESR to continue to play its role in the successful application of the Lamfalussy approach in the future.

Thank you.