

**FESE's Response to DG Internal Market's Public Consultation Paper on
Amendments to the Commission Decisions establishing CESR, CEBS & CEIOPS**

I. Introduction

1. The Federation of European Securities Exchanges (FESE) represents 42 Securities Exchanges (in equities, bonds, and derivatives) through 23 Full Members from all EU Member States and Iceland, Norway and Switzerland as well as 7 Corresponding Members from European emerging markets. Through its members' activities on a global scale, FESE enjoys links with the regulatory community and industry from around the world.
2. FESE welcomes the opportunity to express its views concerning the Commission's consultation document on possible modifications to the Commission Decisions which established the Lamfalussy Committees of Supervisors. Both the European Council and the European Parliament have contributed to the extensive discussions concerning the review of the Lamfalussy Process. The institutional reports (ECOFIN Roadmap of December 2007, ECOFIN Conclusions of May 2008, the European Parliament's Report on financial services policy of June 2007 and current work and the Commission's Review of the Lamfalussy process - Strengthening Supervisory Convergence) greatly contributed to the debate concerning the future of the supervisory structure of Europe.
3. FESE agrees with the view that **we do not need any fundamental structural changes to the current legislative framework**. The work undertaken by the 3L3 Committees is key to ensuring a coherent interpretation of the legislative provisions across Member States and an ongoing practice of exchange of information and supervisory cooperation among national Competent Authorities. FESE members believe that **the priority should be to strengthen Level 3**. Measures aimed at this objective could include the possibility for EU institutions to **assess the performance of the Committees of Supervisors** regularly and to **intensify the cooperation among national supervisors** (e.g. by encouraging the development of multilateral Memoranda of Understanding between supervisors or supporting colleges of supervisors). In the field of securities, we think that CESR, endowed with a different decision-making procedure and with an increased budget, should be the head of a network of supervisors; this would contribute to developing a unified approach to financial supervision and to obtaining full European integration.

II. Response to DG MARKT's questions:

▪ **Mediation**

(i) Do you agree that voluntary and/or obligatory mediation can be a useful tool to enhance the effectiveness of supervision?

4. Article 16(2) of the Market Abuse Directive establishes the legal basis for mediation in a relatively narrow way, i.e. by foreseeing a role for CESR to solve the potential disputes only among supervisory authorities and not between an issuer and the host competent authority. In December 2005, FESE responded to CESR's Paper for

Comments on Mediation Mechanism¹ by stating that CESR needed to publish a properly anonymised and simplified version of each of the cases submitted to mediation and provide comprehensive information on the use of the mechanism on a periodic basis. In August 2006, CESR established the Protocol on Mediation Mechanism setting its scope beyond MAD and generally including EU Directives or Regulations related to the securities markets. In this wider securities markets context, we believe that the mediation mechanism can become a useful tool to largely contribute to more effective supervision, to solve possible cross-border disputes between supervisors, to strengthen the convergence of supervisory practices and to improve day-to-day supervisory cooperation.

5. However, we believe that more transparency is needed with regard to mediation cases and the processes followed. In particular, FESE believes that the outcomes of a mediation case should be disclosed to the public (or at least made accessible to interested parties), in order to constitute guidance for further disputes and to encourage convergence at EU Level. Moreover, we believe that the mediation mechanism scheme could be improved by allowing the industry to activate the mediation procedure directly. Therefore, market participants should be entitled to ask for the use of mediation in case of divergent opinions with the host competent authority. This would represent an important step forward in the convergence process.

(ii) Do you agree that this task should be conferred to the Committees of Supervisors in the Decisions establishing them?

6. The assignment of the mediation task to the Committees of Supervisors would provide them with a formal recognition. However, the attribution of this undertaking should be established not by a Decision, but rather by other, softer, legislative instruments (e.g. Protocols, Memoranda of Understandings or Agreements). Moreover, we would support a reference to the Committees of Supervisors only if (a) there were mechanisms to ensure transparency, as well as (b) market participants were given a clearer opportunity for requesting a CESR member to initiate mediation. The mediation role of the Committees of Supervisors should be clearly pre-defined, with outlined procedures and distinguishing between cases for mandatory and/or voluntary mediation, whereas this is the case. Finally, our members support the “comply or explain” approach in relation to a CESR member’s reaction to a request to take part in mediation, which will ensure that CESR members take the mediation mechanism seriously.

- **Consultative role**

(iii) Do you agree that the Committees of Supervisors should have an explicit consultative role with respect to certain decisions to be taken by supervisory authorities?

7. In an increasingly integrated market, more and more decisions made by supervisors have a European impact. We therefore agree that there should be an explicit consultative role for the Committees of Supervisors, but these cases (i.e. where there is a consultative role foreseen for the Committees of Supervisors) should respect national competences and therefore be limited to areas harmonised by European law.

¹ [FESE Response to the Paper for Comments - CESR Mediation Mechanism \(Ref: CESR/05-483c\)](#)

- **Information exchange**

(iv) Do you agree with the proposed role of the three Committees of Supervisors with regard to information exchange?

8. European securities legislation and the Lamfalussy directives in particular are based on the separation of competences and the co-operation among national supervisors with regard to the exercise of these competences. Following this principle, the exchange of information among national supervisors on a multilateral basis is already encouraged and expressly foreseen by the Lamfalussy directives. FESE supports the further promotion of information exchange, provided that only relevant information is considered. While mandates for such standardisation of reporting requirements are already in place to a certain extent, the requirements should be further harmonised in the long run. In the short run, and within the limits set by law (e.g. MiFID), the Level 3 Committees (e.g. CESR) should work further on standardising the content and the format of reporting.

- **Delegation of tasks and responsibilities**

v) Do you agree that the Committees of Supervisors should as a priority have a role to foster delegation of tasks between national supervisors?

9. The delegation of tasks between national supervisors is possible without any changes to the current legal framework. Nonetheless, this mechanism has not been adequately used until today and we believe that it should be further promoted to increase the efficiency of supervision.

(vi) Do you consider that delegation of responsibilities should also be regarded as a priority? If so what could be the role of the Committees of Supervisors in this respect?

10. The issue of delegating responsibilities is both excluded by the current legal framework and is not in line with the overall mentality of the FSAP Directives, a core element of which is the assignment of responsibilities to the relevant supervisor. Therefore, we believe that any intervention in the direction of delegation of responsibilities would be disruptive of the regulatory landscape and therefore should not be regarded as a priority.

- **Streamlining reporting requirements**

vii) Do you agree with the proposed role of the three Committees of Supervisors with regard to streamlining of reporting requirements?

11. The practice of streamlining of reporting requirements is complementary with the principle of enabling better information exchange among regulators and improves the overall cost-efficiency of supervisory arrangements. In our view, the contribution of the Committees of Supervisors in fostering the streamlining of reporting requirements would significantly strengthen supervisory convergence.

- **Colleges of supervisors**

(viii) Do you agree with the proposed role of the three Committees of Supervisors with regard to colleges or similar arrangements?

12. The Colleges of Supervisors established in the securities sector in relation to multiple jurisdictional exchanges have been operating effectively so far. Our members' experience with cross-border groups' supervision and regulation through such colleges is positive: indeed, those structures provide a framework that allows the development and implementation of a coordinated approach with respect to supervision, as well as of an efficient cooperation in terms of exchange of information. In particular, national regulators gathered in colleges have been working in order to coordinate their actions in areas of common interest and agree upon measures to promote harmonisation of their respective national regulations.

13. More generally, FESE does not believe that ensuring effective and efficient functioning of the colleges in practice requires formal arrangements or explicit mandate. It has been experienced already that regulators are able to directly draw the terms of their joint supervision when it comes to setting up practical joint action.

- **Development of a common supervisory culture**

(ix) Do you agree with the proposed role of the three Committees of Supervisors to develop a common European culture? If yes what are the most important tools to meet this objective?

14. FESE endorses the view that one of the main objectives of the Committees of Supervisors should be to contribute to the development of a pan-European supervisory culture. In order to do so, EU financial assistance should be made available for 3L3 Committees to launch training programmes, put in place joint inspection teams, exchange personnel and organise secondment schemes, etc. FESE agrees that there are certain practical obstacles in particular with regard to establishing secondments and exchanges of supervisory staff. We welcome the effort to overcome these practical impediments while respecting the respective national competences since it is clear that these obstacles hinder the evolution of common supervisory culture.

- **Cross-sectoral cooperation**

(x) Do you agree with the need to provide a general framework for joint 3L3 work in the Commission Decisions establishing the Committees of Supervisors?

15. Given the increasing interconnection and integration of previously separate fields of financial markets, we agree that a general framework for joint work of the 3L3 Committees would be beneficial to the effectiveness of supervision of cross-sectoral institutions. A more formalised avenue for closer co-operation, in parallel with the discretion for each committee to further specialise in its area, would promote better supervision within the current supervisory structure. Furthermore, among the tools currently used, we particularly welcome the possibility for the industry to comment on the 3L3 Committees work programmes (e.g. the 3L3's Consultation on a common Medium Term Work Programme on cross sector supervisory issues of November 2007). Having said that, we do not see any need for the provision of a general framework for joint 3L3 work to be established by a Decision;

rather, this should be achieved by other, softer, legislative instruments (e.g. Protocols, Memoranda of Understandings or Agreements).

(xi) Should the obligation and responsibility for 3L3 cooperation and coordination be spelled out in a more detailed way? If so what are the specific obligations and responsibilities the Committees of Supervisors should be assigned in this respect?

16. We do not have strong views on this point.

(xii) Do you agree with the approach suggested for the supervision of financial conglomerates?

17. We do not have strong views on this point.

- **Qualified majority voting**

(xiii) Do you consider that the Committees of Supervisors should be requested in the Decisions to take decisions by qualified majority with a "comply and explain" procedure?

18. FESE believes that obliging the Committees of Supervisors to take their decisions by consensus could make it difficult for them to reach decisions and that could be an impediment towards supervisory convergence. Therefore, we would support the proposal to include in the Decisions a request for the Committees of Supervisors to take decisions by qualified majority voting. In addition, it would need to be clarified what constitutes the required "qualified majority". In our view, such a measure should be combined with a "comply or explain" principle i.e. those supervisors who do not comply should explain their decisions publicly. We trust that this mechanism will enhance supervisory convergence and safeguard the consistent application of the decisions made by the Committees of Supervisors, while safeguarding their non-formal binding character. Finally, we suggest that the "comply or explain" principle is applied in all cases, irrespective of whether the decisions are taken by consensus or by qualified majority.

- **Annual Work-Programmes of the Committees of Supervisors**

(xiv) Do you consider that the request to the Committees of Supervisors to submit their annual work programmes to the ECOFIN Council, the European Parliament and the Commission should be included in the Decisions?

19. FESE supports the proposal to allow European Institutions (the European Council the European Commission and the European Parliament) to express their views on the Committees of Supervisors' work programmes and to include this request in the Decisions. However, a comment period should also be foreseen for the industry before the work programmes are submitted to the EU institutions. This will ensure that the work programmes benefit from the industry's view on the prioritisation of the workstreams. In the past, CESR has consulted the industry on its work programme concerning specific directives (e.g. MiFID and the Transparency Directive); we found this exercise very useful because the order of the priorities was revised in line with input from the industry. The same process should happen with regard to the annual work programmes of the Committees of Supervisors as well.

- **Financial stability**

xv) Do you agree with the proposed role of the three Committees of Supervisors?

20. Supervisors are well placed to conduct risk analyses and our members therefore support a role for the Committees of Supervisors with regard to monitoring of financial stability and regular reporting to the Council. Given that this is a substantial new responsibility, we think that it might imply additional resources for the three Committees of Supervisors.

(xvi) Are additional efforts needed to strengthening risk analysis and responsiveness at the EU level? If so please specify these efforts.

21. We have no specific comments.