

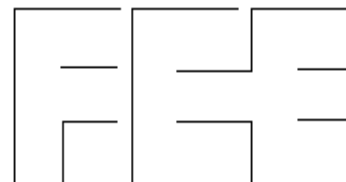
Date
8 July 2003

Le Président

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Mr Michel Prada
Chairman Inter-Institutional Monitoring Group
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cc Graham Bishop, rapporteur
Jürgen Tiedje, secretary

Dear Mr Prada,

Re: First Interim Report Monitoring the New Process for Regulating Securities Markets in Europe (The Lamfalussy Process)

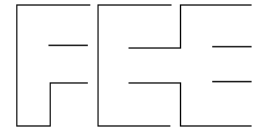
FEE (Fédération des Experts Comptables Européens, European Federation of Accountants) reviewed with interest the First Interim Report of the Inter-Institutional Monitoring Group and appreciates your invitation for more detailed comments. We appreciate the clear description and flow charts of the Lamfalussy process and the subsequent additions to the original process by the European Parliament including the particularities of the “Sunset Clause” and the “Aerosol Clause”. We consider that your Group has an important contribution to make in assessing the Lamfalussy process early in its development, since more than ever a speedy legislative process is needed in the capital markets, that reflects the constantly evolving needs of the markets and that is based on extensive consultations with all market participants. Transparency and openness are key elements in the Lamfalussy process.

The main experience FEE has with the Lamfalussy process and the various organisations involved are in the areas of enforcement (CESR SOP on Enforcement and CESR Standard No 1 on Financial Information: Enforcement of Standards on Financial Information in Europe); the Prospectus Directive (the Directive itself and CESR advice on possible Level 2 implementing measures); and the Transparency Directive proposal. Based on this experience we have responded to the questions raised in the report.

The Lamfalussy process has, no doubt, increased the consultation with the market and users at several levels. FEE welcomes this wider possibility of consultation since this in our view is a condition for a transparent and open process. Transparent and open procedures are important for the technical quality of proposals as well as for their political legitimacy.

1. What are your views on the Group’s assessment criteria? Are they sufficiently precise and complete?

We support fully the criteria of speed and efficiency as well as transparency and consultation. We also agree that bottlenecks or blockages and issues of implementation are important in assessing the success of the Lamfalussy Process for the Directive concerned.



2. *Are you aware of any obstacles obstructing or hampering the swift and efficient adoption of securities markets legislation at European level?*

We are not aware of any immediate obstacles for meeting the deadlines. It will mainly depend on how smoothly the process in the European Parliament and Council will go, in particular for the Transparency Directive. We fully agree with the concern that the push for meeting the timetable should not be at the expense of the quality of the process and the resulting Directives and Regulations.

3. *Is the system of parallel working with provisional mandates granted to CESR efficient?*

Although we appreciate that the tight timetable means that work on Level 2 measures needs to be started while the final details of some components of the Level 1 measures are still under debate, we do not think it is appropriate for CESR effectively to submit its final advice on Level 2 implementing measures to the Commission before the Framework Directive itself is agreed both by Council and European Parliament although not yet formally adopted. The final text of the Framework Directive needs to be known before final advice can be submitted.

It is of course appropriate for CESR to start its work on the Level 2 advice before the Level 1 process is finalised. It could be considered that CESR starts preparation of its advice on Level 2 implementing measures even before the European Parliament has started its first reading in order to obtain initial views and ideas on the main issues to be addressed in the Level 2 implementing measures in a wide consultation. It would be helpful if CESR at this stage of first consultation, immediately after the mandate has been given by the Commission, indicates what in their view are the main issues, including controversial issues, to be addressed. The consultation on proposed Level 2 measures in form of publication of a consultation document by CESR should not start before the first reading in European Parliament and Council is finalised and only if, in the areas of the provisional mandate, common ground is found in order not to risk that the text will still substantially change and the consultation becomes irrelevant on certain issues.

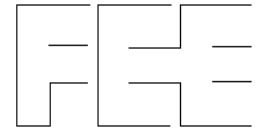
We welcome the extension of the initial deadlines for CESR by the Commission on the mandate for the Prospectuses Directive.

4. *Is the scope of delegation of implementing measures at Level 1 sufficient, too limited, or too wide in order to reach the objective of more efficient securities markets legislation at European level?*

We agree that this question cannot be answered in general and should be considered for each of the proposed Directives separately. In our work on the Prospectuses Directive, we have some concerns that there might be a problem in making an appropriate distinction between Level 1 legislative acts and Level 2 implementing measures. We are of the opinion that all major issues are to be dealt with in the Framework legislation of Level 1. For example, the role of the auditor in relation to prospectuses has only been dealt with at Level 2 (CESR advice) and should be in our view obviously dealt with in Level 1. Also in the Transparency Directive proposal there are some important delegations to Level 2 measures in relation to audit, which in our view should be better addressed as part of the Framework Directive itself.

5. *What do you consider to be the best approach as to the choice of directives or regulations as legal instruments used at Level 2 under the Lamfalussy Process?*

To promote a single European capital market it is essential that Member States act within the common framework provided by the Level 1 principles and do not diverge unnecessarily from European and global norms. Especially individual Member States should avoid, even inadvertently, introducing regulations with extra-territorial effects. In these circumstances, regulations might be preferable since they have direct implication in the Member States. Regulations in addition help to speed up the legislative process due to direct application. From this point of view, if legislation is needed – where



recommendations are not considered to be an adequate instrument – regulations should be used to secure uniform outcomes.

However, it needs to be recognised that at least in some areas there are still huge unavoidable differences in the economic and legal environment of the Member States which will have consequences for the interpretation and implementation of European principles laid down in Level 1 measures. This is especially true for the area of company law. For example, a principle dealing with the responsibilities of the board of an enterprise needs to be interpreted differently under a one-tier or a two-tier corporate governance structure. Such areas can be dealt with properly only by the use of a directive which gives the Member States the opportunity to address the distinctive national features in an adequate way.

Therefore, FEE believes that the question whether to use a directive or a regulation as legal instrument for Level 2 measures needs to be answered on a case-by-case basis, and could be reconsidered when there is more experience with Level 2 measures.

6. Are the consultation processes sufficient? Are they satisfactory and efficient as regards the number of rounds of consultation and deadlines set? Are consultative documents balanced in terms of depth and size?

Our first experience with the more extensive consultations by the Commission are with the Transparency Directive. These first consultations and the summary and analysis of responses of the first consultation have received appreciation within our federation as well as how this has resulted in a proposal for a Directive.

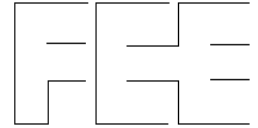
FEE has responded fully to CESR's consultative invitations on their proposals on enforcement of financial reporting by 2005, and provided our own Discussion Paper as input (Discussion Paper on Enforcement of IFRS within Europe, April 2002). Our experience is that the CESRfin Subcommittee on Enforcement was open for input, and ready to discuss the topic once their SOP was published. The resulting Level 3 standard is in our view well balanced and considerable improvements have been made on basis of the comments received.

In relation to the Prospectuses Directive we welcomed the organisation of a second hearing on 27 May and the public consultation on the draft final advice on the Level 2 implementation measures. We are of the opinion that each time, where as a result of consultation and public hearings CESR's original draft proposals are substantially modified, there should be an obligation for CESR to submit the revised proposals to a further round of written comment and public hearings. This would only be possible if sufficient time is given to CESR by the Commission.

We are still of the opinion that the timing and due process of the hearings and consultations by CESR could be improved, although we realise that this is mainly caused by the strict timeframe and deadlines imposed by the Commission. For example in relation to the Prospectuses Directive, CESR announced at the public hearing of 27 May that its second consultation was expected to be published by mid-June with a comment deadline of mid-August and a public hearing on 9 July. Organisations like FEE have a due process to respect and need therefore a certain minimum period of time to prepare comments. Hearings without well developed positions, or the ability to express positions on behalf of an organisation are in our view not useful. If holiday periods are part of the period of comment, the commenting period needs to be extended.

We appreciate that the final draft CESR advice on implementing measures in relation to the Prospectuses Directive is substantially less detailed than the original too detailed proposals of 2002. The final draft advice is more principles based and is probably easier to apply in a wider range of circumstances.

In relation to consultation and transparency we would like to share the following observation with you, which we also have made directly to CESR regarding their work plan. Apart from a brief summary in its Annual Report 2001/2002 of December 2002, the CESR work plan for 2002/2003 is not in the public



domain. Organisations like ours, that want to give a profound contribution to the CESR consultation, would greatly benefit from knowing the content of the work plan in planning our own activities (and scheduling of meetings) and Secretarial resources. Aligning our activities would lead to a better contribution to the CESR work and would therefore also be to the benefit of CESR. Furthermore, we believe that such an approach fits well with the CESR strategy of increased transparency.

7. Is there a further need to provide ex-post transparency, that is to explain to the public why proposals from market participants or others were included in securities markets legislation, or why they were omitted? Do CESR's feedback statements meet the commitments made in its Public Statement of Consultation Practices?

We agree that there is a need to provide ex-post transparency by explaining how major comments have been addressed and why it has been decided not to address certain major comments.

In relation to the feedback statement on CESR Standard No 1 on Financial Information: Enforcement of Standards on Financial Information in Europe, we have expressed our appreciation to CESR for the high quality of the statement in that it explains in a reasoned and reasonable way how the reactions received during the consultation were handled. This is an encouraging model for the future.

8. What are your views on the Group's preliminary observations on possible bottlenecks?

We agree with your views on the possible bottlenecks, and see as the main immediate and inevitable bottleneck undesirable delays likely to result from the forthcoming European Parliament elections.

9. Is the current functioning of the Institutions, committees, market participants, and other parties involved in the Lamfalussy Process conducive to making progress on securing a more effective securities market regulatory system? Are all these actors equipped with sufficient resources?

We would like to stress the importance of sufficient time for the consultation and also the importance of sufficient senior resources for bodies such as CESR, for example. Market participants also need sufficient time to consult with their constituencies, this is a question of both time and availability of specialist resources.

We would be pleased to discuss any aspect of this letter you may wish to raise with us.

Yours sincerely,

David Devlin
FEE President