

Date
20 February 2004

Le Président

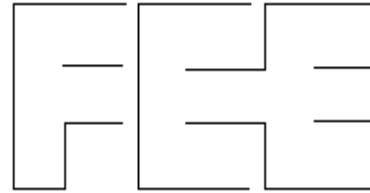
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Mr Michel Prada
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cc Norbert Walter, rapporteur
Jürgen Tiedje, secretary

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Dear Mr Prada,

Re: Second Interim Report Monitoring the Lamfalussy Process

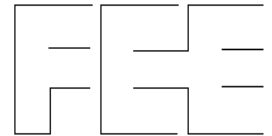
FEE (Fédération des Experts Comptables Européens, European Federation of Accountants) reviewed with interest the Second Interim Report of the Inter-Institutional Monitoring Group and appreciates your invitation for contributions. We appreciate the emphasis in the report on consultation practices at Levels 1 and 2 as well as the examination of Level 3 activities of CESR. We regarded the working document listing the procedural steps taken on each of the Directives under consideration with respect to Level 1 and Level 2 measures helpful. We consider that your Group has an important contribution to make in assessing the Lamfalussy process during 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, CESR Standard No 1 on Financial Information: Enforcement of Standards on Financial Information in Europe and CESR Draft Standard No 2 on Financial Information - Coordination of Enforcement Activities); CESR European Regulation on the Application of IFRS in 2005 - Recommendation for Additional Guidance regarding the Transition to IFRS; the Prospectus Directive and related CESR implementing measures as well as the EC working document and draft Regulation; and the Transparency Directive proposal. Based on this experience we have reviewed the report raised the following comments.

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.

Level 2 advice timing

We recommend that the Commission should issue provisional mandates for Level 2 advice only on subject matters already acceptable to the European Parliament, the Council and the Commission after the first Parliamentary reading. In case of controversial issues, provisional mandates may cause problems. We do not consider it in general 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 which in their view are the main issues, including controversial issues, to be addressed. In general, 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.

Consultation

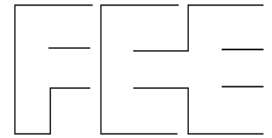
In general we are satisfied with the level of consultation by both CESR and the Commission. FEE has responded fully to CESR's consultative invitations on their proposals on enforcement of financial reporting by 2005 both on standards 1 and 2, and provided our own Discussion Papers as input (Discussion Paper on Enforcement of IFRS within Europe, April 2002, and Discussion Paper European Enforcement Coordination, November 2003). Our experience is that the CESRfin Subcommittee on Enforcement was open for input, and ready to discuss the topic once their draft standards were published. The resulting Level 3 standard is in our view well balanced and considerable improvements have been made on basis of the comments received. The process for Standard No 2 is not yet finalised.

It is important to allow sufficient time for consultation. The CESR Draft Recommendation for Additional Guidance regarding the Transition to IFRS was published on 7 October 2003, with a deadline for comment of 20 November 2003 and a hearing on 12 November 2003. A consultation period of 6 weeks is very short. We appreciate that this recommendation was developed at CESR's own initiative and has no binding nature. Nevertheless, we believe that the market consultation should be similar to Level 2 advice and, if possible, be 3 months. Another example is related to the Prospectus Directive. The Commission Working Document was published in November, the final CESR Advice in January and the Commission Draft Regulation in late January, all dealing with the same subject with tight deadlines and different contents. 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 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 or other external events.

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. Substantial modification goes beyond the condition of benefits of additional input as proposed in the second interim report. This would only be possible if sufficient time is given to CESR by the Commission.

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, the CESR work plan 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.

We fully support the Recommendation of the Group to seek an optimal balance between the desired objectives and the expected workload of stakeholders.



Distinction between Level 1, 2 and 3

An appropriate distinction should be considered for each proposed Directive. All major issues are to be dealt with in the Framework legislation of Level 1 with as aim harmonisation. The Prospectuses Directive aims at a single European prospectus which should end the diversity in current practices across the EU. However, with the current Directive and Level 2 advice, such diversity might continue to exist to some degree with regard to the content of financial information and the level of assurance provided on it in prospectuses. Such resulting differences in expectations are not in the interest of market participants and might eventually jeopardise the aim of the single passport. This issue would ideally have been addressed in the Framework Directive itself or at least in the implementing measures. However, despite the comments raised at various stages in the process, the issue has so far not been fully considered. It is unclear to us whether such issues could finally be solved in Level 3 guidance. A careful balance of issues to be addressed at each of the levels is needed. FEE is at present working on a discussion paper in order to contribute to the debate and process on the financial information included in the single European passport.

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.

Application of the Lamfalussy Process to company law

We appreciate that the Lamfalussy Process contributes to the production of faster EU securities market legislation. We also note the time pressure to complete the Financial Services Action Plan. Indeed the Final Report of the Committee of Wise Men envisaged a wider scope including certain company law issues. We note that certain aspects of the Commission's Action Plan as Corporate Governance are considered as part of securities market law as far as listed companies are concerned. We believe it needs to be carefully examined whether the Lamfalussy Process can be extended to company law, especially in relation to the consultation process and the Level 2 advisory committee. For example, corporate governance is a very wide area with many relevant stakeholders that would need to find a place in the consultation process.

Draft Treaty on Constitution for Europe: implications for comitology

We agree to the conclusion of the Group that Article 135 with delegated regulation would be the appropriate way to replace comitology, since under this article the European Parliament is to obtain sufficient call-back powers with respect to Level 2 measures which is an essential part of the Lamfalussy Process.

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