

Date  
4 February 2005

Le Président

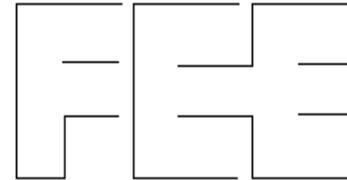
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Mr Walter Van Gerven  
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B-1049 BRUSSELS

cc Graham Bishop, rapporteur

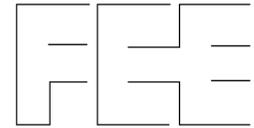
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Dear Mr Van Gerven,

Re: Third Report Monitoring the Lamfalussy Process

1. FEE (Fédération des Experts Comptables Européens, European Federation of Accountants) reviewed with interest the Third Report of the Inter-Institutional Monitoring Group and appreciates the invitation for contributions to the institutions. We appreciate the work undertaken by the Inter-institutional Monitoring Group during its mandate as demonstrated in the three reports published. We appreciate the overall evaluation as contained in the Third report carefully analysing and assessing the achievements at all four levels of the Lamfalussy Process and related aspects your Group has made an important contribution to assessing and evaluating the Lamfalussy Process during its first years of existence. Moreover your Group has also made a significant contribution to the understanding of the Lamfalussy process. 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. We therefore fully support the conclusion that timely Member State transposition of Directives will be key to maintaining momentum and that further attention will need to be given to setting appropriate implementation deadlines in the future. Transparency and openness are key elements in the Lamfalussy process.
2. 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; CESR Standard No 2 on Financial Information - Coordination of Enforcement Activities and CESR Consultation Paper: Guidance for Implementation of Coordination of Enforcement of Financial information); CESR European Regulation on the Application of IFRS in 2005 - Recommendation for Additional Guidance regarding the Transition to IFRS; the Prospectus Directive and related Level 2 measures as well as CESR's proposed recommendations for the consistent implementation of the European Commission's Regulation on prospectuses no. 809/2004; the Transparency Directive proposal and related CESR implementing measures proposals; and the CESR call for evidence and proposed concept paper on equivalence. Based on this experience we have reviewed the Third Report and raise the following comments.
3. Our main observations as addressed in more detail below are the following:
  - A careful balance is needed in selecting the issues to be addressed at Level 1 Framework Directive, Level 2 implementing measures and Level 3 guidance, given the difference in the status and authority of each of the three levels;
  - We do not support a more generalised use of the fast back procedure;



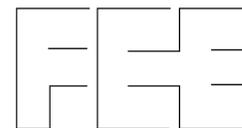
- Sufficient time should be allowed for consultation at all levels, including consultation on revised proposals that are substantially modified compared to the original draft proposals;
  - Better information on the work plans and timetable of the Commission and CESR should be publicly available;
  - CESR should not risk to becoming an accounting standard setter;
  - We have concerns about extending the Lamfalussy Process to company law, especially in relation to the consultation process and the Level 2 advisory committee, given the divergence in legal systems, and difference in culture and tradition.
4. 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. FEE therefore supports the Group's call for broadening the range of external stakeholders in the consultation procedures. Transparent and open procedures are important for the technical quality of proposals as well as for their political legitimacy.

#### Distinguishing between Level 1 framework principles and Level 2 details

5. 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 aiming at 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 implementing measures Regulation, 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 only been partly considered in CESR's proposed Level 3 guidance. A careful balance of issues to be addressed at each of the levels is needed, given the difference in status and authority of each of the three levels. We are of the opinion that many of the issues now partly addressed in the proposed Level 3 guidance for the consistent implementation of the Regulation on prospectuses would have been more appropriately addressed in the Regulation itself (for details we refer to our letters to the EC and CESR of 14 April, 25 May and 20 October 2004). We are of the opinion that striking the appropriate balance between Level 2 and Level 3 deserved more attention in the Third Report, in that Level 3 can implement Level 2 but not change Level 2 implementing measures.
6. Also in the Transparency Directive proposal there are some important delegations to Level 2 measures in relation to audit, which in our view would have been better addressed as part of the Framework Directive itself.

#### Parallel working between Level 1 and Level 2

7. We recommend that the Commission issues provisional mandates for Level 2 advice only on subject matters already acceptable to the European Parliament, the Council and the Commission at the end or after the first Parliamentary reading. In case of controversial issues, provisional mandates may cause problems by pre-empting the positions of the Council and the European Parliament. 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 or close to being 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 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 Level 1 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.

#### Fast track procedure

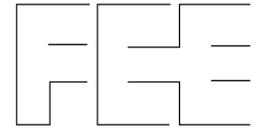
8. We do not favour a more generalised use of the fast track procedures given the reduced transparency and the reduced opportunities for third parties to present their case to responsible parties or to intervene with the European Parliament

#### Form of CESR's advice

9. We support the view of the Group that when there is a serious division of opinion within CESR this should be reported in CESR's advice on Level 2 implementing measures and the different opinions should be presented. Difficult issues should not be left to the Level 3 guidance. For example we had to regret in our letter of 20 October 2004 on CESR's proposed recommendations for consistent implementation of the European Commission's Regulation on Prospectuses, that CESR had not yet reached a consensus on recommendations to be provided in respect of "complex financial histories", whereas we believe that recommendations in this area are essential if issuers and their advisors are to be able to prepare prospectuses that achieve a consistent implementation of the Regulation on prospectuses.

#### Consultation

10. 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 standards are in our view well balanced and considerable improvements have been made on the basis of the comments received.
11. It is important to allow sufficient time for consultation. For example 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 2003, the final CESR Advice in January 2004 and the Commission Draft Regulation in late January 2004, 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. Hearings should be held towards the end of the consultation period. The calls for evidence on "equivalence" and on the Transparency Directive of 29 June 2004 with a request for input by 29 July during the holiday period are difficult to handle by European organisations that wish to seek input and agreement of all their members. 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.



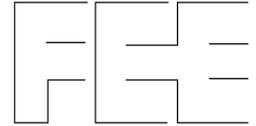
12. We are of the opinion that each time, where as a result of consultation and public hearings CESR's original draft proposals are substantially modified, there should be an obligation for CESR to submit the revised proposals to a further round of written comment and public hearings. Substantial modification goes beyond the condition of benefits of additional input as proposed in the second interim report, of the Group. However, this would only be possible if sufficient time is given to CESR by the Commission.
13. We appreciate the recognition of the wish of more forward-looking time lines on future work of the Commission and CESR. We already shared 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. We appreciate the indicative CESR work plans for the mandate on progress report under the Transparency Directive, as well as on equivalence as respectively included in the CESR calls for evidence and consultation on draft Level 2 advice on the Transparency Directive and in the proposed Concept Paper on Equivalence.

#### Level 3 guidance

14. We welcome CESR's paper and Action Plan: The Role of CESR at "Level 3" under the Lamfalussy Process. Although we support regulatory convergence in principle we share the concerns of the Group and wish to add a further concern; in the financial reporting area, it is important that CESR clearly separates its role from that of the existing international bodies. CESR should not risk becoming an accounting standard setter. We underline the statement in Principle 20 of CESR Standard No. 1 that CESR's intention is not to develop general interpretations and / or application guidance since this is part of the standard setting process conducted by IFRIC and IASB. Level 3 guidance should be clearly separate from standard setting in the financial reporting or auditing field.
15. We would not support, as likewise concluded in the Third report, an endorsement mechanism for CESR's decisions at Level 3. The CESR standards should be persuasive through the clarity and quality of their content rather than Commission endorsement.

#### Application of the Lamfalussy Process to company law

16. We appreciate that the Lamfalussy Process contributes to the production of faster EU securities market legislation. We share the concern expressed of extending the Lamfalussy Process to company law. We note that certain aspects of the Commission's Action Plan such 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, given the divergence in legal systems, and difference in culture and tradition in the various EU Member States. As far as corporate governance is concerned, this is a very wide area with many relevant stakeholders that would need to find a place in the consultation process.
17. We are also concerned about the extensive use of comitology in the proposed Eighth Directive, as commented on in our position of 17 November 2004 on the Proposed Audit Directive. In a global environment it is important that the international standards are adhered to and a maximum of convergence is established. Regulation must be proportionate and guarantee that the audit firms are able to provide good services to their clients. The proposed Directive covers many areas directly, or indirectly through comitology, including registration requirements, ethics, independence rules, auditing standards, audit reports, quality assurance, oversight arrangements and cooperation with foreign oversight bodies. Secondary legislation needs to



be limited to what is necessary to achieve the objective, which is to provide high-quality audits in the public interest.

Draft Treaty on Constitution for Europe: implications for comitology

18. We note that to the new Constitutional Treaty a declaration on Article I-35 has been annexed which indicates "the Commission's intention to continue to consult experts appointed by the Member States in the preparation of draft delegated European Regulations in the financial services area, in accordance with its established practice".
19. 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,

A handwritten signature in black ink, appearing to read 'David Devlin', written in a cursive style.

David Devlin  
FEE President