



Ref.: CESR/04-447

**Guidance for Implementation of Co-ordination of Enforcement of  
Financial Information**

**FEEDBACK STATEMENT**

October 2004



## Feedback Statement on the Consultation on the draft Guidance for Implementation of Co-ordination of Enforcement of Financial Information

On June 25<sup>th</sup> 2004 CESR published for comments a document proposing draft Implementation Guidance for the organisation of the co-ordination mechanisms of enforcement of financial information. The objective of this document was to provide guidance on the implementation of Standard No 2 on Enforcement of Financial Information published by CESR in March 2004.

The period for comments expired on the 6<sup>th</sup> September 2004. During the consultation period 12 letters were sent by various organisations. All comment letters received have been published on the CESR website.

CESR observes that the draft Implementation Guidance generally received strong support from those who responded to the consultation.

An in-depth analysis of all comments received lead to CESR making some minor changes to the Implementation Guidance, the final version of which is published on CESR website (ref CESR 04-257b) along with this feedback statement (ref CESR 04-447) providing the views of CESR on the most critical points raised by respondents to the public consultation.

CESR takes the opportunity of this feedback statement for thanking all respondents for their fruitful and constructive contribution.

### **Public disclosure of selected information**

Under Standard No 2 on Enforcement and its Implementation Guidance, the database of enforcement decisions is clearly intended to be accessible only by EU National Enforcers and no one else as described in Standard No 1 and 2. Discussions within the EECS will also only involve the EU National Enforcers (with proper internal confidentiality rules).

Respondents had divided views on the appropriateness of an exchange of confidential information between EU National Enforcers. CESR believes that the harmonisation of enforcement practices and harmonisation in the application of financial reporting standards would be hampered if the exchange of information between enforcers has, on an ongoing basis, to be limited to non-confidential information. Appropriate measures are necessary for ensuring that confidential information may be exchanged between all EU National Enforcers. It is also worth remembering that, as indicated in paragraph 24 of the Implementation Guidance, exchange of information through the database will take account of national legal restrictions.

Public disclosure by CESR of selected information is also foreseen in Standard No 2 as this may produce further benefits for harmonisation. As indicated by some respondents to the public consultation, such disclosure should follow a publication policy.

It is actually CESR's intention to develop and follow such a publication policy. As indicated earlier<sup>1</sup>, the basic principles underlying public disclosure of enforcement decisions will be to ensure sufficient and meaningful transparency about decisions reported on and, in parallel, to safeguard any confidentiality and privacy concerns. It is necessary to clarify that this disclosure relates only to enforcement decisions considered through the co-ordination mechanisms (Standard No 2). It is currently not contemplated to harmonise national practices for public reporting beyond what is explained under Principle 21 of the Standard No 1 on Enforcement of Financial Information.

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<sup>1</sup> See Feedback Statement published by CESR in March 2004 after the public consultation on the Standard No 2.



### **Wider Consultation**

Some respondents called for wider consultation mechanisms involving different stakeholders beyond EU National Enforcers.

CESR has already acknowledged the importance of this aspect in the Feedback Statement published in March 2004 after the public consultation on the Standard No 2. Wider consultations and discussions will be considered, notably in the framework of the CESR consultation practices.

As indicated under paragraph 13 of the Implementation Guidance, EECS meetings will, to the extent possible be hosted by different EECS members on a voluntary rotation basis to allow for the opportunity of meeting and discussing issues with various interested parties. CESR will further explore the possibility of having annual meetings with relevant interested parties.

It is however important to underline that actual implementation and start of the co-ordination mechanisms designed by CESR in Standard No 2 is the priority in the short term.

### **Number of EECS meetings**

Some respondents to the public consultation suggested that EECS take place more frequently than on average every three months, especially during the first reporting seasons under IAS/IFRS.

As indicated in paragraph 13 of the Implementation Guidance, EECS may take place more frequently depending on the need. It is therefore possible for EECS to adapt its session's pace and indeed it is envisaged that there may well be a need for more frequent sessions in the early stages.

### **Review of EECS activities**

Some respondents asked whether it would not be useful to put in place specific mechanisms for the review of EECS activities.

Standard No 2 and the Implementation Guidance did not address this aspect because it is already covered by CESR general internal governance process. Periodic reporting by EECS is part of this process.

### **Enforcement decisions**

Some respondents felt that CESR should develop a common approach to documenting and recording the facts and circumstances behind enforcement cases.

The Implementation Guidance specifies the information that needs to be input to the database (see paragraphs 24 to 30 of the Implementation Guidance). CESR assumes that EECS members will check all relevant facts and circumstances of cases considered before deciding to submit specific details of the case to the database. The process of how a decision is documented by EECS members is clearly a matter of due national process for decision making.

Some respondents raised concerns over whether the EECS will act as a "second-chamber" of decision making. As indicated in Standards No's 1 and 2 this is not the case. The EECS cannot overrule a national decision but the discussions within the EECS can influence future decisions.

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