

MEMO# 17524

May 14, 2004

DRAFT INSTITUTE COMMENT LETTER ON EU'S CONSULTATION PAPER ON ENSURING CONSISTENT APPLICATION OF EU LEGISLATION

ACTION REQUESTED [17524] May 14, 2004 TO: INTERNATIONAL COMMITTEE No. 26-04 RE: DRAFT INSTITUTE COMMENT LETTER ON EU'S CONSULTATION PAPER ON ENSURING CONSISTENT APPLICATION OF EU LEGISLATION Attached is the draft Institute comment letter on the consultation paper of the Committee of European Securities Regulators (CESR) on how it should develop its role in Level 3 of the Lamfalussy process to ensure consistent application of EU legislation ("Consultation Paper").¹ Comments on the Consultation Paper are due by June 1, 2004. If you have any comments on the draft letter, please provide them to me by May 21, 2004 at jchoi@ici.org or at (202) 326-5810. The Consultation Paper sets forth CESR's recommendations and seeks comment on Level 3 functions, which CESR divides into three categories: (1) coordinated implementation of EU law; (2) regulatory convergence; and (3) supervisory convergence. Coordinated Implementation of EU Law The draft letter agrees with CESR that it could be helpful for all CESR members to be given rulemaking powers to implement, and adapt to changes in, EU legislation and CESR standards. The letter, however, cautions that, with such rulemaking authority, CESR members also should be subject to certain transparency standards (possibly developed at the EU-level) to permit interested persons to provide comments. The letter states that it would be beneficial if national regulatory authorities implemented EU legislation in a fully transparent manner to receive input from interested persons and to obtain broad support of the rules transposing EU legislation. Regulatory Convergence The draft letter supports CESR's intention to find ways to give more authority to its work on regulatory convergence. The letter recommends that CESR should alert the EU Commission about the need to update EU legislation or to request that the Commission intervene to make certain standards or guidance binding if CESR finds that the voluntary approach on a particular issue or area is not effective in promoting consistent application of EU law. Memorandum to International Members No. 20-04 [17378] (Apr. 19, 2004).² The draft letter also supports CESR reviewing areas not covered by EU law to adopt autonomous standards as a common EU-wide regulatory approach to particular businesses. The letter recommends that CESR's regulatory intervention focus on eliminating barriers to integration in an area not yet covered by EU-legislation, which would permit market forces to develop the most efficient means to achieve EU-wide solutions. Supervisory Convergence The draft Institute letter supports CESR's proposals to enhance cooperation and coordination of surveillance and enforcement activities among CESR members. The letter takes the view that joint

investigations of cross-jurisdictional institutions specifically and greater interaction among staff of national authorities more generally will promote consistency in supervising regulated entities in the European Union. The draft letter also agrees with CESR that it would be helpful to create databases of regulatory interpretations and judicial cases to which CESR members could refer. This type of database will provide national regulators with access to information on how other national regulators practically enforce EU-wide rules and legislation. Over time, greater transparency of the regulatory interpretations and judicial decisions will likely promote greater convergence of supervision across the European Union. The letter also supports the development of a mediation mechanism for disagreements among Member State regulators. Jennifer S. Choi Associate Counsel
Attachment (in .pdf format)

Source URL: <https://icinew-stage.ici.org/memo-17524>

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.