

CESR's Position



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Common rulemaking, local supervision”

- Effective, day-to-day supervision remains local
 - proximity, language, knowledge of local or specific features
 - decisions remain subject to local rules and procedures, e.g. judicial review
 - maintaining some local discretion in the application of the rules
 - use of colleges for cross border matters i.a. systemic groups
 - some exceptions: CRAs, T2S.

The new Authorities

- Creation of new **Authorities** (Ex Level 3 Committees) for B, I, S.= Agencies ?
- Based on the **existing cooperative structure**
- in charge of developing common rules of the L. 3 type
- Mainly within the ambit of directives, but also as part of existing cooperation
- **Level 1 and L.2** remain unchanged: right of initiative of the Comm.

Rulemaking

- Binding level 3 rule= among supervisors
- Binding on the national supervisors or also also v.a.v. market participants?
- “Regulation” or “administrative precedents”
- Powers of verification on outcome of national supervision: “quality control”
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Enforcement

- **Peer review**: authority will verify implementation in national legal system
- If not: pressure on that member “**name and shame**”
- if not: ? **substitution** of decisions
 - **L.4**: comm. enforcement action
- **Political** process

Mediation

- Conflicts between national supervisors
- Also between a firm and a supervisor?
- Final binding decisions by the new Authority
- Precedents: see judicial case law

Open questions

- Political will? Most agree on the principle, but the conditions and details are still open
- One, two or three authorities? Not for now!
- Binding powers: what does it mean? Includes decisions on individual cases? Can one separate facts and application of the rule?
- Mediation role with respect to deficiencies in regulation: “binding” but with due process.

Evaluation

- Strong support from almost all CESR members
- Differences on details
- Less systemic concerns
- Additional instruments: delegation
- Funding of the Authorities
- Governance of the Authorities: independence and accountability