

CESR CALL FOR EVIDENCE

(ref: CESR/09-406b)

Mutual recognition with non-EU jurisdictions

1. Association française des marchés financiers (AMAFI) has more than 120 members representing over 10,000 professionals who operate in the cash and derivatives markets for equities, fixed-income products and commodities. Nearly one-third of the members are subsidiaries or branches of non-French institutions.

AMAFI welcomes the opportunity to comment on the Call for Evidence issued by CESR on mutual recognition with non-EU jurisdictions. But rather than responding to the individual questions in the Call for Evidence, we would like to help inform CESR's thinking by emphasising several aspects that we view as central to implementing mutual recognition arrangements.

➤ ***Implementing mutual recognition arrangements should not obscure the ultimate goal: to bring about convergence in standards and practices***

2. There is no question that mutual recognition is a useful and relevant process that can facilitate cross-border exchanges. This is particularly true in an area such as finance, where a large number of market participants operate on a global basis. Recognising the equivalence of regulatory regimes, and thus allowing participants to supply certain products or services in countries with which mutual recognition agreements have been established, is a flexible approach, especially since it requires little or no adjustment to local legal frameworks.

But because such equivalence can never be perfect, mutual recognition must always be a transitional arrangement that stays in place until the rules have been harmonised – a process that may take time. This is the only way to create a truly level playing field. The crisis has provided evidence (were any required) of the vital need to take convergence as far as possible.

➤ ***Equivalence is not merely about the rules, but also about the vision and philosophy of regulation***

3. Since recognising the equivalence of regulatory systems is the cornerstone of mutual recognition, the process is first and foremost about recognising the equivalence of existing rules and the methods used by competent authorities to implement for the purpose of authorising and supervising participants, as well as their activities and products. But equally importantly, it also means recognising that these authorities share a similar vision and philosophy in terms of their role as regulator.

Three examples illustrate the importance of this principle.

- While the US securitisation-based products at the root of the crisis enjoyed implicit recognition, the realisation that they were based on a different conception of what constitutes a market should have prevented them from being marketed in Europe.
- Understandings of the scope and content of supervision required for hedge funds vary widely.
- Given that the crisis exposed systemic aspects as being at the heart of numerous issues, it would seem strange to introduce mutual recognition arrangements with a country that has a different approach in a given area, such as, for example, central counterparties on derivatives markets.

➤ ***Mutual recognition arrangements require constant monitoring and should be reversible if necessary***

4. Recognising the equivalence of regulatory systems at a given point in time and establishing mutual recognition as a consequence cannot ever guarantee that this equivalence will endure.

In particular, this means that checks need to be carried out sufficiently regularly, to ensure that the systems are indeed still equivalent. Furthermore, mutual recognition cannot be a definitive process, and must be reversible if changing rules and practices reveal a divergence.

➤ ***Mutual recognition cannot be conceived of without taking account of both the business dimension and political responsibility, which rests ultimately with European authorities***

5. Since mutual recognition is intended to enable participants to carry on their activities or supply products in countries covered by the arrangements, it is fairly likely that their business interests will typically be in opposition. Where some may benefit hugely by gaining access a market that was once closed to them, others will lose out by not being able to stand up to the new competition.

Of course, financial market participants are not the only ones whose interests have to be taken into account. Other stakeholders, particularly businesses and investors, must also be considered. With this in mind, it is nonetheless crucial to ensure that short-term benefits (say the provision of new products and services, or reduced costs) do not lead to much more serious drawbacks further out, especially the loss of control of the finance industry, which not only plays a decisive part for the orderly functioning of any developed economy, such as Europe's, but is also a major source of value added and highly skilled jobs.

6. An examination of the questions contained in the consultation paper shows that CESR is attempting to analyse the costs and benefits for Europe of mutual recognition arrangements. But over and above any microeconomic analyses provided by participants, these discussions must also incorporate a macroeconomic vision of the positioning of Europe and its participants in terms of financial services.

In any event, the economic balance of the arrangements must be maintained by making sure that European participants have at least as much to gain as to lose. In concrete terms, this may mean linking different areas of mutual recognition to ensure that what is gained by third-country participants in one area is gained by European participants in another.

In general, aside from the specifically economic dimension, the mutual recognition process implies that the European authorities will have to accept greater responsibility for oversight and security.

➤ ***Mutual recognition should be for qualified clients only***

7. The establishment of mutual recognition arrangements should be considered only for qualified clients. In other categories, particularly retail clients, convergence of standards is the only way to ensure adequate protection.

However, this necessitates a common definition of qualified clients, who are not necessarily the same as professional clients under MiFID. It is a pity from this perspective that IOSCO has broken off its work on this issue.

➤ ***The USA is a key partner – but not the only one***

8. Given the size of its financial market, the USA is of course a key partner in mutual recognition. However, developments in recent months show the difficulties of implementing such arrangements in the US political environment. There are therefore good grounds for considering implementing mutual recognition arrangements with other countries.

