EUROPEAN COMMISSION

DG INTERNAL MARKET

Public Consultation Paper on Amendments to Commission Decisions establishing CESR, CEBS & CEIOPS

This document does not represent an official position of the European Commission. It is a tool to explore the views of interested parties on the possible revision of the Commission Decisions setting up CESR, CEBS and CEIOPS. The suggestions contained in this document do not prejudge the form and content of any future proposal or decision by the European Commission.

23 May 2008

1. INTRODUCTION

The purpose of this document is to consult all interested parties on possible modifications to the Commission Decisions[1] which established the Lamfalussy Committees of Supervisors (so called Level 3 Committees), i.e. the Committee of European Securities Regulators (CESR), the Committee of European Banking Supervisors (CEBS) and the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS).

This issue and the scope of activities of the Committees of Supervisors have given rise to intensive discussions in 2007 and 2008, on the basis notably of the Commission Communication on the review of the Lamfalussy process[2] and the report prepared by the Inter-Institutional Monitoring Group on the same subject[3].

A broad consensus, reflected in the conclusions adopted by the ECOFIN Council on 14 May, was found between most parties that the responsibilities of the Committees of Supervisors should be aligned, clarified and strengthened to ensure an enhanced contribution to supervisory cooperation and convergence at EU level. This would remedy the current situation, in which the Committees of Supervisors carry out a significant number of tasks aiming at fostering supervisory convergence and cooperation without having a clear and explicit mandate to this end.

In addition, the current financial turmoil has increased awareness of the need to strengthen EU financial stability arrangements and triggered a debate on whether, and if so how, the Committees of Supervisors should play a role to contribute to the safeguarding of financial stability.

2. SUGGESTED APPROACH

The Commission services do not consider that a radical overhaul of the existing Decisions is needed. The broad thrust of these Decisions could remain as it is. However, the Commission services propose to introduce greater consistency between the three Decisions and to establish a clearer framework for the activities of the Committees of Supervisors in the area of supervisory cooperation and convergence. To this end, it is proposed to refer in the Decisions in an explicit manner to the main tasks that the Committees of Supervisors are expected to perform.

This should not be seen as an exhaustive list. Any list risks indeed being quickly overtaken by market developments. Furthermore, establishing an exhaustive list would not be consistent with the independent status of the Committees of Supervisors. However, the Commission services consider that all parties (co-legislators, supervisors, financial institutions and end-users) would greatly benefit from the existence of a clearer and more detailed mandate for the Committees of Supervisors. If necessary, this mandate, or parts thereof, could be further specified by the co-legislators in relevant directives.

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[1] Commission Decisions 2001/527/EC, 2004/5/EC, 2004/6/EC

[2] COM(2007) 727

[3] http://ec.europa.eu/internal_market/finances/docs/committees/071015_final_report_en.pdf

This consultation paper presents ideas as to what the Level 3 tasks should be and explains the underlying reasoning. The objective would be to broadly align the Decisions, but not to achieve complete harmonisation between the three Decisions as sector-specific issues may require some differences between them. Stakeholders are invited to comment on these ideas by 18 July. If they deem it appropriate, they are also invited to propose additional (or fewer) tasks which should be conferred on the Committees with respect to supervisory cooperation and convergence.

Finally, stakeholders are invited to comment on the role that the Commission services foresee for the Committees of Supervisors with regard to financial stability monitoring and reporting.

3. SUPERVISORY COOPERATION AND CONVERGENCE

An essential task of the Committees of Supervisors is their contribution to the consistent and timely implementation of Community legislation in the Member States, which implies a coherent interpretation and application of the rules on the ground.

In doing so, the Committees play a crucial role in fostering supervisory convergence and cooperation, which is a key objective of the Lamfalussy process. This section reviews the various tools which the Committees could use in order to accelerate progress towards this objective.

3.1. Mediation

Mediation is commonly defined as "a non-binding procedure, in which a neutral intermediary, the mediator, assists the parties in reaching a settlement of a dispute"[4]. The involvement of a mediator may be either on an obligatory or a voluntary basis. It is seen by many as an indispensable tool to resolve possible cross-border disputes between supervisors, to strengthen the convergence of supervisory practices and to improve day-to-day supervisory cooperation.

Responding to the ECOFIN Council's invitation[5] to explore the preconditions to the establishment of a mediation mechanism and, where appropriate, to test the mechanism in the securities, banking, insurance and pensions fields, the Committees of Supervisors agreed sectoral Protocols on Mediation Mechanisms.

Broadly speaking, the protocols define the scope of mediation and regulate procedural rules concerning the organisation, management and supervision of a mediation request. Mediation mechanisms should be used for settling disputes concerning consultations, exchanges of information, joint agreements, decision-taking or other potential general cases relating to cooperation under the relevant sectoral legislation.

Under current legislation, only CESR has been mandated to participate in a soft dispute settlement as envisaged in Article 16 (2) of the Market Abuse Directive. However, CESR reported about the lack of cases brought to the mediation mechanism. The frameworks implemented by CEIOPS and CEBS also remain largely untested.

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[4] FSC report on Financial Supervision of February 2006 (Francq report)

[5] ECOFIN Council's conclusions of 5 May 2006

In the banking and insurance sectors, mediation is not explicitly provided for in EU legislation. This may however change once Solvency II[6] and the revised Capital Requirements Directive (CRD)[7] enter into force as they could provide CEIOPS and CEBS with certain consultative responsibilities[8] in specific cases. The Solvency II proposal foresees an obligatory consultation with CEIOPS if supervisors disagree on the approval of an internal model of an insurance undertaking or in cases of disagreement between the group supervisor and the supervisory authority on the solo Solvency Capital Requirement. CEIOPS' advice should be duly considered by the group supervisor before taking its final decision. A similar consultative role is considered for CEBS in the upcoming revision of the CRD. In particular, CEBS would be consulted when differences of views occur in supervisory colleges on key supervisory aspects. Its advice would be non-binding, but should be duly considered by the supervisors before taking their final decision.

As a result, certain mediation responsibilities may be conferred to all Committees of Supervisors under relevant sectoral legislation. It should therefore be logical to also refer to the mediation role of the Committees of Supervisors in the Decisions establishing them. The Commission services consider however that it would be useful if the Committees of Supervisors would act as mediators each time this is actually needed, and not only when this is required by legislation. The use of mediation mechanisms has been so far too limited. Supervisors should be encouraged to make a greater use of them. Enshrining the mediation role of the Committees of Supervisors in the Commission Decisions would send an appropriate signal in this direction. At a later stage, this could be complemented by Council conclusions inviting national supervisors to make a greater use of the mediation mechanism.

Question:

(i) *Do you agree that voluntary and/or obligatory mediation can be a useful tool to enhance the effectiveness of supervision?*

(ii) *Do you agree that this task should be conferred to the Committees of Supervisors in the Decisions establishing them?*

3.2. Consultative role

The Solvency II proposal provides for obligatory consultations with CEIOPS in advance of a decision being made by a group supervisor on whether a third country regime is equivalent. CEIOPS can be also consulted by a supervisory authority with regard to the approval of an internal model. In these cases, CEIOPS' advice will contribute to the legitimacy of the decision of the group supervisor.

Question:

(iii) *Do you agree that the Committees of Supervisors should have an explicit consultative role with respect to certain decisions to be taken by supervisory authorities?*

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[6] COM(2008) 119

[7] For details please refer to http://ec.europa.eu/internal_market/bank/docs/regcapital/consultation_en.pdf

[8] Sometimes referred to as mediation.

3.3. Information exchange

Efficient exchanges of information between supervisory authorities are key to ensuring the proper supervision of the financial system and safeguarding financial stability in the EU.

The banking, insurance and securities directives impose clear legal obligations on supervisors to cooperate and exchange information. On this basis, the Committees of Supervisors have been adopting guidelines and developing mechanisms (such as the Transaction Reporting Exchange Mechanism under Art. 25(3) MiFID or the operational networking project of CEBS) to facilitate the exchange of information between Member States.

Responding to the ECOFIN Council Conclusions of 4 December 2007, the Commission will review the financial services directives, with a view to ensuring that provisions underpinning supervisory cooperation and exchange of information between competent authorities are satisfactory. In addition, the Commission's proposals to revise the CRD will further clarify the legal obligations to exchange information and will imply a move from a bilateral towards a multilateral exchange of information. In addition, the suggested provisions will allow for a multilateral exchange of information in relation to Ministries of Finance, central banks and supervisors of systemically relevant branches in emergency situations.

The Solvency II proposal suggests a substantial modernization and simplification of group supervision. The provisions on information exchange and cooperation in a group context were adapted to the proposed new regime. The functioning of these provisions will be further specified in implementing measures at Level 2.

The ongoing work at Level 3 towards more standardised reporting requirements for financial institutions (see point 3.5.) could make it easier for supervisors to share information, as data provided in similar or compatible formats will be more easily accessible and comparable. The Committees of Supervisors should be mandated in the Commission Decisions to establish mechanisms to ensure effective information exchange between supervisory authorities.

Question

(iv) *Do you agree with the proposed role of the three Committees of Supervisors with regard to information exchange?*

3.4. Delegation of tasks and responsibilities

The ECOFIN Council of December 2007 reiterated that work should be initiated at Level 3 in order to facilitate the delegation of tasks and responsibilities between national supervisors. The delegation of tasks and responsibilities is a way of making supervisory cooperation and convergence become a reality in the EU. It would also help streamlining supervisory arrangements and open the way towards a more cost-effective way of supervising the financial sector.

The Prospectus Directive already provides for the delegation of some tasks. The Solvency II proposal encourages upwards delegation of tasks in the context of group supervision both via a Level 1 provision and an implementing measure. In the context of cross-border supervision of outsourcing an explicit provision on downward delegation of tasks has been included in the Solvency II proposal.

It may be useful to require in the Decisions the Committees of Supervisors to do their utmost to foster the actual implementation of the principle of delegation of tasks. If there are legal hurdles which cannot be overcome at Level 3, these should be clearly identified by the Committees of Supervisors – and if necessary modified by legislation or implementing measures.

The delegation of supervisory responsibilities raises delicate legal issues, in particular because it may interfere with the allocation of responsibilities to home and host supervisors in the directives. Some therefore take the view that it would be premature to implement this principle, without appropriate changes being made to the directives.

Question

(v) *Do you agree that the Committees of Supervisors should as a priority have a role to foster delegation of tasks between national supervisors?*

(vi) *Do you consider that delegation of responsibilities should also be regarded as a priority? If so, what could be the role of the Committees of Supervisors in this respect?*

3.5. Streamlining reporting requirements

Streamlined reporting requirements for financial institutions would result in enhanced cost-efficiency of EU supervisory arrangements. The compliance burden falling on large cross-border groups in particular would be significantly reduced, with a positive effect on competitiveness.

The key challenge in this area is to develop common formats for financial institutions reporting to supervisors and to work out the arrangements for IT data-sharing. The Committees of Supervisors have already put into practice some arrangements concerning standardisation of reporting formats. Further work in this field is envisaged in their working programmes for 2008. This includes work on increasing harmonisation of supervisory reporting and public disclosure in the frame of future advice for Level 2 within the Solvency II project.

The Committees of Supervisors should intensify work in this area and achieve as soon as possible tangible results. The Commission services therefore consider that their responsibility to introduce more homogeneity in reporting requirements should be reflected in the amended Commission Decisions.

Question

(vii) *Do you agree with the proposed role of the three Committees of Supervisors with regard to streamlining of reporting requirements?*

3.6. Colleges of supervisors

As recalled by the ECOFIN Council in its conclusions of 14 May, colleges of supervisors can make a decisive contribution to improve the supervision of cross-border financial groups. Within these colleges, supervisors will be expected to agree on key supervisory issues such as the approval of internal models or reporting requirements. Colleges may also facilitate the sharing of information between home and host supervisors.

The suggested amendments to the CRD[9] aim to reinforce supervision of cross-border banking groups by requiring i) the establishment of colleges of supervisors for all cross border groups, ii) agreement within colleges on key home/host issues e.g. the approval of internal models, reporting requirements and iii) referrals to CEBS in case of disagreement within colleges (see point 3.1.). CEBS will be required to elaborate non-legally binding guidelines for the operational functioning of colleges. While the concept of colleges of supervisors has not been formally introduced by the Commission in Solvency II, the proposal also aims at considerably reinforcing the cooperation between all the supervisors involved in the oversight of an insurance group. CEIOPS will provide advice on the coordination arrangements under group supervision in Solvency II.

The ECOFIN Council invited the Committees of Supervisors in December 2007 to explore the possibility of setting common operational guidelines for the operation of colleges and for defining the rights and responsibilities of its members. The Committees were also invited to monitor the coherence of the practices of the different colleges of supervisors and to share best practices. These tasks are crucial in order to ensure the consistent operation of the colleges and prevent competition distortions between cross-border groups.

Although both CEBS and CEIOPS have important experience in this field, the Commission services are of the view that it is essential to explicitly mandate the Committees of Supervisors in order to ensure effective and efficient functioning of the colleges in practice.

Question

(viii) Do you agree with the proposed role of the three Committees of Supervisors with regard to colleges or similar arrangements?

3.7. Development of a common supervisory culture

One of the major objectives of the Lamfalussy process is to develop a common supervisory culture in the EU, which would ensure a true level playing-field for financial institutions and progressively eliminate differences in the approaches of national supervisory authorities. This can be only achieved if supervisors share a common understanding of the rules and comparable working procedures. The Committees of Supervisors should encourage and facilitate this process.

Since their establishment, the Committees of Supervisors have actively worked towards meeting these objectives. They have launched many sectoral seminars and workshops as part of their general training programmes, arranged for a significant number of bilateral

[9] For details please refer to http://ec.europa.eu/internal_market/bank/docs/regcapital/consultation_en.pdf

secondment schemes and put in place joint inspection teams or supervisory visits. This work is also carried out at a cross-sectoral level. As of 2007, the 3L3 started developing a joint training platform, which will provide an opportunity for the exchange of insights and experience regarding practical aspects of supervision and regulation of cross-sector issues. The Committees of Supervisors have also been looking into the obstacles which impede national authorities to establish secondments and exchanges of supervisory staff (e.g. tax and social security issues). They have been exploring various tools to overcome these practical barriers, for example by adopting "standardisation" approaches (toolkits).

The importance of these tools and the need to continue the Level 3 work in this respect was highlighted in the ECOFIN Council's conclusions of December 2007. These activities of the Committees of Supervisors could be supported from the EU budget from next year onwards.

The envisaged amendments to the Commission Decisions should spell out the contribution to the development of a pan-European supervisory culture as one of the main objectives of the Committees of Supervisors and mandate them clearly to carry on this work, both on sectoral and cross-sectoral basis. The Committees should be encouraged to intensify the use of the already existing tools (as mentioned above) as well as to come forward with new instruments.

In particular, the Commission services are of the view that the Committees of Supervisors should increase their efforts with a view to facilitating personnel exchanges and shared training among supervisory authorities, sectorally and on cross-sectoral basis. This seems to be, in the long run, the most effective way to foster the emergence of a common supervisory culture.

Furthermore, the Commission services are of the view that the Committees of Supervisors could usefully enhance their cooperation with the supervisory authorities of third countries. Possibilities for exchanges of personnel and common training programs should be explored. This would help support the process of regulatory and supervisory convergence at the global level.

Question

(ix) Do you agree with the proposed role of the three Committees of Supervisors to develop a common European culture? If yes, what are the most important tools to meet this objective?

3.8. Cross-sectoral cooperation

Several initiatives have been put in place by the Committees of Supervisors with the objective to ensure cross-sectoral consistency of works carried out in all financial services sectors. A Joint Protocol on cooperation was signed between CESR, CEBS and CEIOPS in November 2005 to formalise arrangements for so-called 3L3 cooperation. Joint annual work programmes have been prepared since 2006. A 3L3 medium term work programme identifying strategic areas of joint work until 2010 was developed for the first time in 2008. Joint structures have also been established, including the Interim Working Committee on Financial Conglomerates (IWCFC) set up between CEIOPS and CEBS in 2006.

The abovementioned developments are not recognised in the Commission Decisions establishing the Committees of Supervisors, which refer solely to the necessity of maintaining close operational links with the Commission and the Level 2 Committees. Taking into account the increasing number of areas of common concern to all Committees of Supervisors and acknowledging the existing initiatives developed to this end, the Commission services believe that the joint 3L3 work should be recognised and supported in its amended Decisions. They could explicitly stress the need to ensure effective cross-sectoral cooperation and coordination between CEBS, CESR and CEIOPS. The wording should, however, remain fairly general as to allow the Committees of Supervisors to organise efficient cooperation in an independent way.

Taking on board the views expressed by a large majority of Member States during the initial consultations carried out within the Financial Services Committee (FSC), the Commission services do not consider it to be opportune at this stage to replace the IWCFC by a new formal Level 3 Committee responsible for financial conglomerates. The proliferation of committees should be avoided and the existing structures should be used to the full.

In view of the increasing importance of financial conglomerates and of the upcoming revision of the Financial Conglomerates Directive (2002/87/EC) planned in 2008 and 2009, however, a stable solution should be found. The Decisions establishing CEBS, CEIOPS and CESR should be modified with the objective to bring work on conglomerates within their competence, with an obligation for them to strictly cooperate in this area.

The Decisions should also specify that cooperation on conglomerates issues should be exercised in a Joint Working Committee on Financial Conglomerates (JWCFC), which will provide a forum for elaborating a synthesised view of the Committees of Supervisors on the supervision of financial conglomerates, preventing any unnecessary inconsistencies and ensuring no duplication of work. The Commission services are of the view that the JWCFC could be in practice responsible for the preparation of joint technical advice to the Commission on draft implementing measures in the field of financial conglomerates. The formal adoption of the advice would remain the responsibility of CEBS and CEIOPS. Request for advice would be sent formally by the Commission to the Committees of Supervisors and the JWCFC.

Questions

(x) *Do you agree with the need to provide a general framework for joint 3L3 work in the Commission Decisions establishing the Committees of Supervisors?*

(xi) *Should the obligation and responsibility for 3L3 cooperation and coordination be spelled out in a more detailed way? If so, what are the specific obligations and responsibilities the Committees of Supervisors should be assigned in this respect?*

(xii) *Do you agree with the approach suggested for the supervision of financial conglomerates?*

3.9. Qualified Majority Voting

Up until now, the Committees of Supervisors have taken their decisions by consensus. This has made it difficult to reach decisions in a number of areas (e.g. reporting) and has hampered the contribution of the Committees to supervisory convergence. Following the conclusions adopted by the ECOFIN Council in December 2007, the Committees are now in the process of introducing in their charters the possibility to take decisions by Qualified Majority, with a "comply and explain" procedure to be followed when a given supervisor does not apply the decision on which a vote has taken place. The Committees of Supervisors are expected to complete this process by the middle of this year.

In order to strengthen the requirement to take decisions by Qualified Majority, one possibility could be to enshrine this request into the Decisions. This would give more weight to the new procedure and avoid any rolling-back.

Question

(xiii) Do you consider that the Committees of Supervisors should be requested in the Decisions to take decisions by qualified majority, with a "comply and explain" procedure?

3.10. Annual Work-Programmes of the Committees of Supervisors

The ECOFIN conclusions of December 2007 also invited the Committees of Supervisors to submit to the ECOFIN Council, the European Parliament and the Commission their annual work-programmes. This will allow the Institutions to express their view on these work-programmes and give political guidance as to how supervisory cooperation and convergence should be achieved. This will also enhance the accountability of the Committees at the EU level. In 2008, for the first time, the committees have submitted their work-programmes to the Institutions. They should do so again in November this year for their 2009 work-programmes so as to allow the Institutions to react on them at the very beginning of the following year.

Question

(xiv) Do you consider that the request to the Committees of Supervisors to submit their annual work-programmes to the ECOFIN Council, the European Parliament and the Commission should be included in the Decisions?

4. FINANCIAL STABILITY

The increased complexity of financial products and international markets poses greater challenges to the ability of the industry, regulators and supervisors to keep pace with the evolving risks in the financial system. Therefore one of the conclusions drawn from the current financial turmoil is that risk assessment processes at the EU and global level should be further strengthened. Next to this, there is general consensus that the relevant authorities should take additional steps to more effectively translate their risk analysis into proposed actions that mitigate the risks. The latter is a reaction to the fact that some weaknesses were known or suspected before the turmoil began, but were not addressed effectively.

The role of the three Committees of Supervisors in strengthening the risk analysis and responsiveness at the EU level was discussed by the ECOFIN Council on 14 May 2008. Finance Ministers underlined the importance of receiving regular and concise assessments of key developments, risks and vulnerabilities in the financial system in the EU based on the reporting by the EFC's Financial Stability Table. The Commission services are of the opinion that the three Committees of Supervisors should be in a position to frequently assess these features, to alert other authorities at EU level about potential or imminent problems and where necessary propose policy actions.

To this end, the Commission Decisions should reflect the responsibility of the three Committees of Supervisors for financial stability monitoring and regular reporting to the Council, thereby taking account of important linkages between financial sectors. This entails that CEBS, CEIOPS and CESR will not merely monitor and report on micro-prudential developments in the banking, insurance and securities. The Committees are explicitly requested to cooperate more widely and regularly in dealing with cross-sector issues and risks, beyond financial conglomerates.

Next to the three Committees of Supervisors, the Banking Supervision Committee of the European System of Central Banks (BSC) – that brings together representatives from all EU central banks and supervisory authorities – will continue to provide regular assessment of financial stability to the EFC Financial Stability Table, while ensuring a clear division of labour with the CEBS.

Taking into account the aforementioned, the Commission services intend to adapt the Commission decisions with the overall aim to ensure:

- regular, up-to-date, focussed and forward-looking reporting to Finance Ministers by the three Committees of Supervisors on potential or imminent problems in the financial system. Given the delicate nature of such analyses confidentiality would need to be guaranteed;
- a clear division of work between the relevant authorities. Particular attention should be paid to the division of work between CEBS and the BSC, which could be based, to a certain extent, on a distinction between macro and micro prudential analyses. Next to this, close cooperation at the international level (e.g. with the International Monetary Fund, the Financial Stability Forum and US authorities) will be essential to ensure an effective and coherent global approach, and
- proper translation of risk analysis into policy action. This calls for clear methodology to map and classify risks, substantive policy advice as well as introducing a system to enable the EFC's Financial Stability Table and the ECOFIN to track developments related to the risks identified and their subsequent follow-up.

Question

(xv) Do you agree with the proposed role of the three Committees of Supervisors?

(xvi) Are additional efforts needed to strengthening risk analysis and responsiveness at the EU level? If so, please specify these efforts.

5. CONSULTATION PROCEDURE

All interested parties are invited to respond to the above questions. The Commission services would also welcome any general observations concerning the role that the Committees of Supervisors should perform in the future and the way in which the Decisions establishing these committees should be modified.

Reactions to this consultation paper should be sent to the following email address: MARKT-L3@ec.europa.eu by 18 July 2008. It will unfortunately not be possible for the Commission services to take full account of the responses received after this date. Requests for clarification on specific questions should be sent to the same mailbox.

All replies will be made public via the European Commission website: http://ec.europa.eu/internal_market/finances/committees/index_en.htm#review.

Contributions will be published together with the identity of the contributor, unless the contributor objects to publication of the personal data on the grounds that such publication would harm his or her legitimate interests. In this case the contribution may be published in anonymous form. Otherwise the contribution will not be published nor will, in principle, its content be taken into account.

A summary of responses will be published by autumn 2008.

On the basis of the comments received, and taking into account the positions of the ECOFIN Council, the European Parliament, the Level 2 Committees and the Committees of Supervisors, the Commission services will proceed with the revision of the Decisions before the end of 2008.