



1 September 2008

The 3 Level 3 Committees' Joint Response to the European Commission's "Public Consultation Paper on Amendments to Commission Decisions establishing CESR, CEBS & CEIOPS"

General comments

The three Level 3 Committees, CESR, CEBS and CEIOPS ("the Committees"), welcome the European Commission's Public Consultation Paper on the possible revision of its Decisions establishing them. The Committees note that the Commission's document does not represent an official position and are pleased to offer their views on that basis. The outcome of the work is of the utmost importance to the Committees. We stand ready to contribute further work and, if necessary, participate in meetings in the process leading up to the finalisation of the decisions.

We would like to stress the importance of involving the three Committees in the next stages of the work leading up to the final and we appreciate the assurances we have been given in this regard.

The Committees consider that the Consultation represents a ratification of what is already practice in the Committees as a result of progressive steps undertaken by them in their efforts to enhance supervisory convergence. The Committees broadly support this direction of the Paper and recall that their independence is basic for the adequate functioning of the Lamfalussy system.

The Committees consider that, in order to avoid the need of reviewing the mandates on an annual basis, the inclusion of concrete projects instead of general tasks (e.g. 3.5 on Reporting and 3.6 Colleges) should be avoided. The Commission should rather focus on long term objectives and the tools available to the Committees to achieve those objectives.

The approach of aligning, clarifying and strengthening the Committees' responsibilities with the objective of enhancing their contribution to supervisory cooperation and convergence at EU level is appreciated. It complements the Committees' own considerable efforts towards this end. Revisions to the Decisions could mitigate some of the challenges they face due to limits beyond their control. Nevertheless, too much detail will not necessarily ensure achieving the objectives of the Committees.

Specific comments

The Committees have contributed to many discussions on their roles and future. Their positions have been set out in published documents. They are pleased to submit summary comments on the questions in the Paper, following the numbering therein.

3. SUPERVISORY COOPERATION AND CONVERGENCE

3.1. Mediation

Question:

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

Comment:

The Committees have developed voluntary mediation mechanisms for supervisors, with non binding decisions to provide this option. As part of the adoption process, the schemes were fully considered and endorsed by Committee Members. Nevertheless, obligatory entrance into the existing mediation mechanism would be a step forward.

Question:

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

Comment:

This could be helpful, provided that it reflects the nature of the mediation mechanisms that the Committees have established, which for two of the Committees are new. Under these mechanisms, it is not the Committees themselves but, rather, a mediator or panel of mediators as appointed by a Gatekeeper who conducts the mediation. Furthermore, compliance with a decision is voluntary and non-binding. Also, ultimately the use made of mediation will depend on Members' perception of their need in the circumstances, including any alternative.

3.2. Consultative role

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?

Comment:

Provided the competence and discretionary scope of the responsible national supervisors is safeguarded, the proposal and examples suggest a constructive development in the Committees' roles, in specified situations.

3.3. Information exchange

Question

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

Comment:

The Committees see the proper exchange of supervisory information as fundamental to their functions. As the Paper mentions, they already have existing arrangements and mechanisms in place. In addition, the Financial Conglomerates Directive makes provision for exchange of information for entities covered by that Directive. The Committees combine effectiveness with other essential considerations, such as confidentiality. It may be desirable to reflect the relevant criteria, including clarification on the confidentiality regime applicable to the Committees' Secretariats, in any Decisions mandate.

3.4. Delegation of tasks and responsibilities

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?

Comment:

The Committees have generally tended to support the principle of voluntary delegation of tasks, as part of their 'Home – Host' sector and joint work. Voluntary delegation of tasks can improve substantially the positive effects of cooperation, strengthening mutual trust among supervisors, while avoiding moral hazard. The proposal could be contentious for some Committee Members, in certain applications. A new Joint 3 Level 3 Task Force is being established to analyse the issue. It will develop legal and some operational issues. It foresees easier scope for delegation of supervisory tasks than for responsibilities, for which ad hoc legal provisions –outside the scope and powers of the Committees- might be necessary.

(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?

Comment: Except in very specific existing cases (e.g. under the Prospectus Directive), delegation of responsibilities is mainly seen by the Committees as a much longer term possibility. Whilst delegation

should be built mainly on mutual trust among supervisors, there are numerous obstacles in the current legal framework that would need to be addressed, as a matter of priority, at Level 1.

3.5. Streamlining reporting requirements

Question

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

Comment:

Within the Committees' remit of supervisory reporting and disclosure requirements, they have continued their drive towards common formats. Certain sector programmes with timetables and product results, have been agreed.

3.6. Colleges of supervisors

Question

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

Comment: As the Paper indicates, colleges of supervisors are primarily matters concerning CEBS and CEIOPS, and their Interim Working Committee on Financial Conglomerates, whilst CESR works on similar arrangements within MiFID. Their joint and sector work is highly developed. The Commission is aware of this from its observership in the Committees.

3.7. Development of a common supervisory culture

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?

Comment: The Committees wholly support this statement of their role. In addition to the individual tools mentioned, the intensity and diversity of supervisors regularly working together in the Committees is one of the most significant influences. Fostering and supporting their ability to continue with that work will further help to achieve this objective. Exploring extension of their mutual exchanges of personnel and common training programmes to third countries is a potential longer-term proposition to encourage. It could be helpfully added to present discussions on EU funding for the Committees' training programmes.

3.8. Cross-sectoral cooperation

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?

Comment: The Committees can comment on the questions together, by stating that they consider the summary and proposals right, both in their balance and in their approach. They would be assisted by the Decisions specifications and re-titling of the 'IWCFC' in the manner suggested.

3.9. Qualified Majority Voting

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?

Comment: In a follow-up to the Paper, the Committees have introduced, or at the time of this Response are introducing, Qualified Majority Voting (QMV) and a "comply or explain" procedure into their Charters. However, the decisions would remain legally non-binding. Committee decisions should, in the first instance, aim to be made by consensus. QMV may then be deployed where that would not be possible. The Committees' new provisions, with only slight differences in text, could well be served by reflection in the Decisions, in case the Commission deems necessary to insert such specific issue, already dealt with by the Committees in their charters.

3.10. Annual Work-Programmes of the Committees of Supervisors

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?

Comment: The Committees have targeted the production stages of their 2009 draft work programmes, to be ready for transmission to the European Institutions for their views in November 2008. They would be

assisted by early Institutional reactions, to be able to timely reflect on these reactions when finalising their respective work programmes, to be approved by their Members. Revision of the Decisions could encourage this. In presenting any work programmes the Committees will put forward their key priorities rather than the detailed content of the actions to be undertaken.

4. FINANCIAL STABILITY

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.

Comment: The Committees continue to stand ready to provide reports and supervisory expertise where, and in forms, appropriate to them. In order to do so in an efficient manner the Committees will, as already agreed, provide regular Reports (twice a year), complemented by qualitative assessments of risks more frequently if necessary. The Committees would be helped by division of tasks and responsibilities, which could distinguish their supervisory functions from, for example, in-depth ongoing data retrieval and processing for early warning systems, which is done by other institutions.

The Committees consider it preferable to include a broad reference to Financial Stability in their mandates rather than detailed requirements.