



CESR/09-356

CEBS 2009 85

CEIOPS-3L3-04-09

10 April 2009

**3L3 Joint Contribution  
to the European Commission's consultation on the improvement of  
supervision for the financial services sector**

Following the report of the High-Level Group on financial supervision in the EU chaired by Jacques de Larosière ("the Group"), published on 25 February 2009, the Commission has announced its intention to come forward by 13 May 2009 with a Communication setting out its proposals on the future of the EU supervisory architecture followed by specific legislative measures in autumn 2009.

Before making its proposals, the European Commission (EC) on 10 March 2009 launched a public consultation where all interested parties are invited to submit their comments on the proposals on financial supervision made in the de Larosière Report and in the EC Communication of 4 March 2009.

The 3L3 Committees are pleased to provide their joint contribution to the public consultation procedure<sup>1</sup>. Also each of the Committees has prepared more specific sectoral contributions given separately in the annex, which may go beyond the joint position.

The current financial crisis and its spread over the global financial system have revealed the importance of the Commission's initiative to review and reorganise the European supervisory arrangements for all financial sectors which is welcomed and supported by the 3L3 Committees.

The Level 3 Committees have been directly involved in the assessment of the current financial market supervisory framework. The work undertaken by the members of the Group as well as the opportunity we have had to contribute are also welcomed.

The problems revealed by the current financial crisis clearly show that there is a need for improvement in the existing arrangements of financial regulation and supervision. The steps identified in the Report will contribute to restore the necessary confidence in the functioning of the European financial markets. The 3L3 Committees will continue to play an instrumental role in the follow-up on the report's recommendations which should be implemented very rapidly.

---

<sup>1</sup> The Czech National Bank, that is member of CESR, CEBS and CEIOPS, does not agree with the joint contribution.

## **1. 3L3 joint position on the de Larosière Report and EC Communication:**

### *1.1. The Level 3 Committees support the framework for action provided in the de Larosière Report*

The Level 3 Committees support the establishment of a new European body with clear competence in the field of financial stability of EU markets. They also support the approach of strengthened and harmonised legal framework for financial services at EU level, where the newly established independent Authorities (be it one, two or three) - will play a key role in defining the technical implementing rules and ensuring their convergent implementation in Europe. We welcome the divide of the system according to a macro and micro approach, based on harmonized rules and decentralized supervision, that builds on the current evolutionary approach followed by the Committees as a strong basis for quick progress. Going forward, the main challenge will be in developing and implementing the details and keeping the momentum in delivering upon the tasks of the Committees with a continued involvement of the national supervisory authorities in the change-process.

The Level 3 Committees welcome the proposal to enhance their current status and to transform them into independent Authorities by providing them with adequate powers, tools and increased resources to discharge any duties and responsibilities allocated to them. The committees would like to point out that they regard the budgetary/financial and legal/political independence of such Authorities as an essential condition for creating an effective supervisory framework.

### *1.2. The design of the future EU regulatory and supervisory architecture is a multi-dimensional challenge that needs to be taken up*

The Level 3 Committees recognise the challenge EC faces in delivering input as to legal solutions employed for designing legislative framework for future EU supervisory authorities. The future independent EU supervisory authorities would have a wide range of duties that will need to be accommodated in their statutes and within the EU legislation governing the financial sector. A carefully crafted set of statutory provisions would be needed in order for the 3L3 Committees to be able to deliver on current and new tasks. These statutory provisions should:

- a) accommodate the requirements of self-governance/independence and accountability needed for delivering advice within the Lamfalussy framework. As to their future institutional independence, the Committees agree with the recommendation that future statutory provisions should allow for "*the highest degree of independence vis-à-vis the European institutions, (...)*". Since their advisory role under the current Lamfalussy procedure will be maintained in the future EU supervisory arrangements, the 3L3 Committees find that independence from political influence as well as accountability towards EU institutions are key components of their current and future tasks.
- b) present the most appropriate and effective sound legal solution for implementing and empowering the new independent EU supervisory authorities. The Level 3 Committees recognise the challenge of introducing the concept of binding mediation/decisions/regulations to the statutes of 3L3 Committees and look forward to the EC's proposals on this important and delicate topic.

- c) achieve a balance between the macro and micro prudential tiers of the future EU supervisory architecture as well as between the future EU authorities and national supervisors.

The Level 3 Committees acknowledge the merits of the de Larosière Expert Group's ambitious proposals to introduce a two tier/level institutional architecture for the supervision of the EU financial market. In this forward-thinking set up, the Level 3 Committees provide the necessary link between the envisaged macro and micro supervisory arrangements, with the role of identifying and mitigating systemic risks.

Within the new tasks of the ESRC (European Systemic Risk Council), the Level 3 Committees and national supervisors (where relevant) need to be represented and to participate on an equal footing with the other participants, in order to be able to fulfil their tasks of delivering sector-specific input and performing at the macro oversight tier.

The supervisory balance at the ESRC, and the links between the macro and micro supervisory approaches/decisions are regarded as highly important by the Level 3 Committees. At this stage, the Level 3 Committees seek to better understand the practical and legal consequences and the reporting to and accountability of the Expert Group's proposals as to macro-supervision arrangements. In this respect, they would favour a clear framework of information exchange through the supervisors without duplication of reporting streams.

### *1.3. Adequate tools are needed to fulfil the new tasks under a re-organised structure*

The Level 3 Committees would like to highlight the following key aspects of the new structure:

#### *a) A harmonised set of core rules in the EU*

The Level 3 Committees welcome the initiatives related to eliminating national discretions as a necessary step towards a harmonised set of core rules in the EU.

The Level 3 Committees agree on the need for an enhanced and intensified regulatory and supervisory harmonisation across the EU financial sector based on a broad core set of harmonised European rules (single rulebook).

Furthermore they will continue to identify and address the key differences between national legislations of the Member States to promote the convergence of supervisory practices in their respective financial sectors and ensure quality control in the implementation of the common rules. The de Larosière Report calls for the strengthening of the peer review process within the Level 3 Committees. Upgraded peer review processes within the Level 3 Committees will be a key element in this respect. Review Panels have been set up within all Level 3 Committees together with adjoining Peer Review Protocol and/or Mechanisms and/or Methodologies. The 2009 Work Programmes of the Level 3 Committees already present further work to be undertaken by their members.

#### *b) The establishment of the colleges as core structures for cross-border supervision in Europe.*

The colleges of supervisors are a core structure for the enhanced coordination and efficiency of supervision of the cross-border financial institutions. The Level 3 Committees have already taken steps towards to enhance the efficiency of colleges and will continue their monitoring of progresses in that area, involving both European and Third Countries supervisors.

*c) The need for a coherent framework for crisis resolution in Europe.*

Increased regulatory and supervisory harmonisation, over time, will lead to the creation of a coherent and workable framework for crisis management in the EU. The Level 3 Committees welcome the recommendation to set in motion legislative changes aiming at harmonising supervisory powers and tools of intervention, removing obstacles to the cross-border use of these tools and recognition of the need for Member States to agree on more detailed criteria for burden sharing.

*d) Increased and further formalised coordination among the sector regulators and supervisors*

Each of the Level 3 Committees offers a solid basis for the new independent European financial supervisory architecture through past and on-going sectoral work. As such, they agree to use the existing institutional set up with its evolutionary approach as the starting point for future institutional arrangements for the supervision of the EU financial sector. They will increase and formalise further their coordination.

The Level 3 Committees are actively carrying out a significant number of cross-sector joint activities, as identified in our 3L3 Annual Work Programs, our 3L3 Joint Protocol, the 2007 3L3 Consultation on Medium Term Work Programme, and the ECOFIN Council conclusions. Specifically, on financial conglomerates significant co-operation and convergence has, through the Joint Committee on Financial Conglomerates (JCFC), been achieved on a number of levels in a relatively short period of time by providing synthesized views on the supervision of Financial Conglomerates within their many work streams.

Related, the Level 3 Committees welcome the increased role regarding external relations (future global supervisory arrangements), which is essential in today's highly integrated and globalised markets.

*1.4. The new structure requires increased and adequate resources*

In the context of significantly extended competences, the proposal to reinforce the resources available to the Committees is both needed and welcomed in order for them to be able to deliver on the proposed increased workload and extended responsibilities.

Level 3 Committees agree with the findings and recommendations of the de Larosière Expert Group on the issue of resources available. Under the current circumstances, all Committees have an increasingly heavier burden in terms of tasks and deliverables (ECOFIN roadmaps, G20 roadmaps, Calls for Advice etc.) but the resources available are limited.

While designing the legal and institutional solutions for offering adequate resources to the Level 3 Committees, the need to maintain the clear institutional independence and accountability needed for delivering advice within the Lamfalussy framework will need to be observed as well.

## Annex:

### Sectoral positions on the de Larosière Report and EC Communication:



#### CEBS – specific inputs as to the banking sector

CEBS<sup>2</sup> welcomes the de Larosière report on the future direction for financial regulation and supervision in Europe, as well as the ensuing communication from the Commission on the future direction for financial regulation and supervision in Europe, building on the de Larosière report. The de Larosière group has covered a wide area of regulation, supervision and crisis management situations. The analysis of the causes to the banking crisis is well described, and gives thus a good starting point in finding the remedies. One crucial conclusion of the report is the failure of many banks' own models, systems and internal governance to adequately measure, price, manage and control risks.

The recommendations as presented in the report build to a large degree on the enhanced evolutionary approach to European financial supervision as implemented by CEBS over the past several years. That is important, for it makes it feasible to implement the report's recommendations quickly. Indeed, CEBS is already implementing a number of the report's recommendations that do not require legislative or institutional change.

It is important to have a feasible, operationally independent structure that can implement the substantive recommendations in the report, building on existing structures. We think that many of the recommendations provided by the de Larosière group will strengthen coordinated supervision and convergence of regulation and will contribute to a better framework for achieving the overall aim of a robust financial system.

Below we will focus on the main elements in the proposal that merit support as well as on a number of key-challenges and potential legal obstacles that in our opinion need to be addressed in the follow-up work.

#### Supports

CEBS supports the following recommendations in the report:

- **a harmonised set of core rules in the EU without unjustified national discretions and options.**

CEBS welcomes the recommendations to initiate a concerted and determined effort together with the EU Commission to equip the EU financial sector with a consistent set of core rules. In this regard CEBS would like to stress the advice it has delivered to the EU Commission on the deletion of a very significant number of national discretions and options in the CRD, with justification for those which remain. We stand ready to further contribute to a process whereby the key-differences in national legislation will be identified and addressed as soon as possible, taking into account the specific features of the national banking sectors.

---

<sup>2</sup> With the exception of one member who is not in favour of commenting in this stage to the de Larosière report.

CEBS would like to emphasize that major progress cannot be made without the strong support and commitment of the L1 and L2 committees. Indeed, differences in national legislations come from decisions taken by national legislators and Ministries of Finance. Once they are entrenched in Directives or in Regulations, the room for manoeuvre left to supervisory authorities is reduced.

- **the strengthening of CEBS' position as a hub for the national bank supervisory authorities**

CEBS agrees with the rapid implementation to receive more resources which will enable us to employ more people and act more pro-actively in identifying problems and proposing solutions. We also plan to further developing and strengthening our present peer review processes and putting into practise the use of qualified majority voting by our committee.

- **the strengthening of the macro prudential supervision by creating a European Systemic Risk Council (ESRC) for the identification of macro prudential risks and giving policy direction and early risk warnings**

CEBS sees merit in the setting up of the ESRC, which task will be to form judgements and make recommendations on macro-prudential policy, issue risk warnings and compare observations on macro-economic and prudential developments and give directions on these issues. This builds further on the risk assessment work that CEBS has commenced. It will be important to ensure a strong and balanced link between the macro and micro sides. There would be merit in ensuring an adequate representation of supervisory authorities in the macro-prudential supervision body to enhance its effectiveness. A more balanced representation in the ESRC would also contribute to a better understanding on the calls of response to be provided by supervisory authorities concerning specific risk warnings issued by the ESRC.

- **national supervisory authorities continue to be responsible for day-to-day supervision**

CEBS favours an approach that builds upon existing national supervisors that are closest to the markets and institutions they supervise and welcomes the recommendation to enhance cooperation and build an integrated network between national supervisory authorities, who continue to carry out the day-to-day supervision.

- **colleges as the core structure for coordinated and aligned cross-border supervision, with a mediation mechanism in the case of disagreements between supervisors**

CEBS sees colleges as a core structure for coordinated and aligned cross-border supervision, both within Europe and on a global scale. To facilitate the setting up and functioning of colleges, CEBS has developed a template for a written agreement between the authorities that would participate in these colleges, has developed good practises for college-structures and is now monitoring across Europe that for major EU banking groups colleges are being set up and operational. We therefore welcome the recommendation in the report to continue to rely heavily on the colleges of supervisors to be introduced by the revised CRD by the end of 2010. In the report it is suggested that – amongst others - these colleges of supervisors should be strengthened by the participation of representatives of the secretariat of CEBS in the college. In a number of colleges we just recently started an initiative in this regard.

- **focus on good quality supervision**

In relation to supervisory standards and practise, CEBS welcomes a strengthened responsibility for defining common supervisory practises and arrangements for the functioning of the colleges of supervisors, as also outlined in the revised CRD. In addition, CEBS sees merit in more frequent and detailed peer reviews, focused on an evaluation of the outcomes delivered through the organisation and processes of the national supervisory authorities, leading to concrete recommendations for improvements.

- **the strengthening of the interests of host supervisory authorities**

CEBS welcomes the balanced approach taken in the report that acknowledges that the supervisor of the home Member State will continue to function as the first point of contact for the banking group, whilst safeguarding the interests of the host supervisory authorities of subsidiaries and branches.

- **the creation over time of a coherent and workable framework for crisis management in the EU**

CEBS appreciates the recommendation to set in motion legislative changes covering more harmonised supervisory powers and tools of intervention, the removal of obstacles to the cross-border use of these tools and the need for Member States to agree on more detailed criteria for burden sharing.

## **Key-challenges and potential obstacles**

Going forward, the main challenge will be in developing and implementing the details and keeping the momentum at CEBS in delivering upon its main tasks with a continued involvement of the national supervisory authorities in the change-process.

As part of this, it will be necessary to clarify how some of the proposals in the report link to the different national regulatory frameworks in place and the responsibilities and accountabilities of the national supervisory authorities, and how to achieve the right balance so as to overcome these potential obstacles.

We would especially like to point out the following points:

- **the balance between the assignment of certain supervisory functions or tasks to the European Banking Authority (EBA), compared with the allocation of the corresponding supervisory responsibilities at the national level.**

The proposed establishment of the Authorities within the EU legal framework as independent EU structures raises legal and institutional questions which need to be addressed with priority. The proposed role of the EBA raises practical legal problems as well. For instance, a legally binding mediation role would be established, allowing the EBA to solve disputes between national supervisors which would enable the former in case no agreement between the supervisors of a cross-border institution could be reached, to take certain supervisory decisions directly applicable to the institution concerned. For CEBS it is unclear in as far these supervisory decisions by the EBA could be balanced with the responsibilities and accountability of the national supervisory authorities concerned. Moreover, also from a practical and legal perspective it is unclear how such a mechanism could work (risk of delays in proceedings, need to deal with different legal frameworks etc.) and how - in the absence of a centralised European Administrative Law - decisions by the EBA should be enforced and likewise be challenged by institutions.

- **the legal mechanism within the EU for bringing about with a sufficient degree of coherence and effectiveness the desired convergence in the interpretation of EU prudential rules.**

It is proposed that the EBA should play a decisive role in the technical level 3 interpretation of level 1 and level 2 measures and in the development of level 3 technical standards; and that a legal mechanism should be put in place so as to ensure that, once a decision has been made on a given interpretation, this interpretation becomes legally valid throughout the EU. It is unclear to CEBS how such a mechanism could work, given the different national regulatory frameworks in place.

- **the balance between the requirement for national supervisory authorities to follow-up on the proposed actions as provided by the ESRC, compared with the responsibilities and accountability of national supervisory authorities.**

In the recommendations it is stated that the ESRC should prioritise and issue macro-prudential risk warnings with a mandatory follow up and action to be taken by the relevant competent authorities in the EU. In addition, if the ESRC judges that the response of a national supervisor to a priority risk warning is inadequate, it shall, after discussion with that supervisor, inform the chairman of the EFC, with a view to further action being taken against that supervisor. It is not clear to CEBS in as far these mandatory tasks and actions by the supervisory authorities could be balanced with the responsibilities and accountability of the national supervisory authorities concerned.

## **Follow-up**

CEBS recognises the need to speedily progress with the road map as envisaged by the de Larosiere group, in order to have the new structures in operation as soon as possible, given their added value in addressing the global crisis that confronts us at the moment, but at the same time points out that clearly, a wide range of legal, institutional and practical aspects still need to be further elaborated upon, including issues such as budgeting and financing as well as sufficient independence.

The design of the legislative framework for the future EU supervisory authorities will be a challenging task since a delicate legal and institutional balance needs to be achieved. A carefully crafted set of provisions needs to be put forward in order for the EBA to be able to deliver on both current and new enhanced tasks.

**More specifically we feel that in order to address the key-challenges as outlined above, a balanced approach is necessary towards the EBA's and national supervisors' respective supervisory responsibilities, independence and accountability.**

We fully appreciate the difficult task ahead of the EU Commission and Member States. CEBS is willing to contribute to the extent possible to accomplishing this task, and CEBS stands ready to play an active role in this work. It will facilitate as much as possible an easy transformation process, and will as far as feasible continue to perform its tasks, given their importance in the crisis.



## **CEIOPS – specific inputs as to the insurance and occupational sector**

The findings and the recommendations from the de Larosière Report as well as the Commission's proposals have been discussed by CEIOPS' Members and Observers during their March 2009 Meeting and the following main messages have been agreed upon:

### ***CEIOPS welcomes the work of the de Larosiere Expert Group:***

The current financial turmoil and its spread over the global financial system have revealed the importance of introducing a macro-prudential approach alongside with improved micro-prudential arrangements to EU supervisory architecture. In this context, the Commission's initiative to review and further improve the European supervisory arrangements covering all financial sectors is welcomed by CEIOPS

CEIOPS, together with the other Level 3 Committees has been directly involved in the assessment of the current financial market supervisory framework. The work undertaken by the members of the Expert Group as well as the opportunity we've had to contribute are also welcomed.

### ***CEIOPS will contribute to the set-up of the future EU supervisory architecture, as and when requested.***

The de Larosière Report did analyse and assess some of the most difficult problems revealed or brought about by the current financial turmoil. As there clearly is room for improvement in the arrangements for financial supervision, CEIOPS will continue to offer input and contribution to the follow-up on the report's recommendations.

### ***CEIOPS' priorities for its future institutional set-up – reinforced, independent and highly accountable***

- *Reinforced:* In the context of significantly extending its competences, *the proposal to reinforce the resources available to CEIOPS is both needed and welcomed* as it will allow CEIOPS to deliver on the proposed increased responsibilities and workload.
- *Independent & highly accountable:* As to the future independence of CEIOPS we agree with the recommendation of the de Larosière Expert Group that future statutory provisions should allow for "the highest degree of independence vis-à-vis the European institutions, which should not interfere in the internal processes and decisions of the Authorities".

Since CEIOPS advisory role under the current Lamfalussy procedure will be maintained in the future EU supervisory architecture independence from political influence and accountability are necessary for the following reasons:

- Independence - is fundamental to offering objective technical advice to the EC. Subordinating CEIOPS to the same institution it was created to advise would lead to the irremediable loss of that objectivity and the central principles of the Lamfalussy procedure would be challenged. Added to that, the current close links with national supervisory authorities would be cut off, with the consequent loss of their extensive technical input and expertise.
- Accountability – the current CEIOPS Decision, and its founding texts, provide for clear reporting duties towards EU political institutions. In this way, full commitment to openness and transparency in delivering technical advice on sector relevant legislation is ensured.

### ***Prudential supervision of occupational pensions***

EU occupational pensions are governed by their own financial services directive<sup>3</sup> which also acknowledges the important social role funded occupational pensions play within national economies.

Supervisory matters relating to the prudential supervision of European occupational pensions have formed part of CEIOPS' overall responsibilities since its inception. The tasks involved are carried out through CEIOPS' relevant working groups.

CEIOPS encourages occupational pensions to be considered in the proposals for a new European financial supervision system.

***CEIOPS welcomes all the initiatives related to eliminating national discretions as a necessary step towards regulatory and supervisory harmonisation.***

***CEIOPS welcomes the increased role regarding external relations.***

CEIOPS welcomes the proposal to further increase its role regarding external / international relations. The current financial world is a highly integrated and globalised market and this brings about both advantages and disadvantages, as we have all learned in the past year. CEIOPS will provide input and support to the global colleges of supervisors (G20 proposal) and further contribute to reforming and improving the EU financial market.

***New tasks regarding the ESRC (European Systemic Risk Council) - 3L3 Committees need equal footing in order to fulfil their tasks in the macro supervision tier.***

The European Commission has fully endorsed the ambitious proposal of the de Larosière Expert Group to introduce a 2 tier/level institutional architecture for the supervision of the EU financial market.

In this forward-thinking set up, CEIOPS as well as its sister Level 3 Committees will provide the vital link between the envisaged macro and micro supervisory arrangements. The ESRC will be able to fully deliver if it has available critical and up-to-date and sector-specific inputs.

---

<sup>3</sup> Directive 2003/41/EC on the activities and supervision of institutions for occupational pensions provision (the IORP directive)

CEIOPS supports the proposal of the Expert group regarding the 3 step process towards an integrated EU supervisory system and on this matter considers that 3L3 high-ranking representatives from each sector should have an equal footing in all stages in order to minimise discrepancies between the macro and micro supervisory approaches/decisions. An independent chair for the ESRC would be, in our opinion, a precondition for the aforementioned equal-footing.

### ***Setting up supervisory colleges on all major cross-border financial firms***

In the insurance sector CEIOPS has extensively promoted and contributed to the establishment of its supervisory colleges for cross-border financial institutions, with more than 100 active colleges (CoCos), and Lead supervisors elected for each of them. Further analysis and assessment are underway to finding ways of increasing the efficiency of CoCo's.

### ***Challenges in designing the future EU supervisory architecture:***

- *Designing legislative framework for the future EU supervisory authorities:*

The EC will have to put forward a carefully crafted set of statutory provisions in order for the 3L3 Committees to be able to deliver on both current and new enhanced tasks.

The future EU supervisory authorities will have a wide range of duties that will need to be accommodated in their statutes and within the EU legislation governing the financial sector. Building on existing 3L3 practice, the future EU authorities, will continue to have as part of their future duties, a similar, if not extended, advisory role within the Lamfalussy framework. At the same time according to the 4 March 2009 EC communication endorsing the de Larosière Report, the 3L3 Committees are also envisaged to have "oversight and ultimate decision-making powers regarding colleges of supervisors for cross-border groups; ensuring consistency and good practice through setting common high standards and providing common interpretations of requirements for supervisory activities ; (...).

As such the EC proposal for a legal structure will have to:

- a) accommodate the requirements of independence and accountability needed for delivering advice
  - b) present the most appropriate and effective legal solution for implementing and empowering the new EU supervisory authorities.
- *Achieving a high degree of harmonisation between national financial regulations, supervisory powers and sanctioning regimes:*

To date, the main focus of CEIOPS has been to ensure convergence of practices among its members. Harmonising and eliminating national specificities will need considerable efforts and changes both at EU and national levels. Future assessments of statutory independence of the national supervisory authorities, if part of an EC request for advice, will be undertaken by CEIOPS as part of its statutory duties found in Article 2 of the new EC Decision regarding CEIOPS - 2009/79/EC.



**CESR – specific inputs as to the securities sector** Ref.: CESR/08-289b

This paper provides an outline of CESR members' views on the recently published de Larosière Report (the "Report") at this stage of the discussion. However, a limited number of members do not have yet an official position on the Report or did not comment on certain issues.

Without prejudice to legal considerations and feasibility - there is a **broad consensus** of CESR members on several issues of the Report.

*General remarks on the Report:*

- Members appreciate the Report as the basis for further deliberations, and almost all members express their general support to the Report and the need to implement it rapidly.
- Members are of the view that stronger EU mechanism is needed by strengthening the role and status of the current 3L3 committees, and most of them support the transformation of the committees into new independent EU Authorities.
- Members are of the view that harmonisation of the rules should be enhanced and intensified (more maximum instead of minimum harmonisation in the legal instruments on Level 1 and 2) in order to avoid in the future potential regulatory arbitrages. However, they acknowledge that there are impediments to maximum harmonisation arising out of the differences in national laws (e.g. civil law, company law, bankruptcy law). Moreover, serious effort should be made to eliminate the use of national discretions provided in the Directives of the securities sector and the practice of gold plating. This will require the launch of the revision of the existing Directives of the securities' sector.
- Some members are open to possible Treaty changes to achieve the objectives of the Report, others consider that this might delay the process.
- Members consider that CESR should be involved in the further steps for the implementation of the Report and contribute to the discussions with the EU institutions.
- Members consider that harmonization of competent authorities' powers, resources and to possess high level of independence are a precondition for the good functioning of the new supervisory architecture. Regimes for sanctions should be strengthened and, to the maximum extent possible, harmonised.
- Many members are of the view that cooperation between national supervisors should be increased/ intensified, especially with regard to cross-border cases.
- Many members consider that cooperation of CESR with CEBS and CEIOPS should be intensified possibly with the establishment of a formalised coordinating body. Some members are of the view that the cooperation should lead to the integration of the committees into one authority.
- Some members are of the view that the home country control system should be revisited as it proved to create loopholes of supervision and therefore, to be inefficient.

- Members are divided as to whether the “European System of Financial Supervision” should consist of three sectoral Authorities as provided in the Report for the immediate future, two Authorities (one responsible for the prudential supervision and one for the supervision of the Conduct of Business rules), as provided in the Report for a later stage or one single integrated Authority. However, most members agreed that this issue should not be tackled at the present stage.

#### *Rule-making/ regulatory powers:*

Members discussed as to whether and to what extent rule-making powers should be centralised and in case of positive response, how the implementation by the national authorities of the centrally produced rules could be ensured. On these issues:

- Members are in favour of centralised rule-making and decentralised supervision i.e. the central Authority will create binding rules that will be implemented by the national authorities at the local level.
- Some Members are of the view that L1 rules should be more general/ principles-based granting to the new Authorities the competence to issue binding rules (equivalent to the current L2 and L3 rules). Most members consider that Level 1 should bring more harmonisation (deletion of options and exemptions). However, the possibility of granting to the Authorities rule-making powers should be tested under the current EU legal framework for the transfer of powers.
- In terms of scope of rule-making powers, members consider that the competences should cover all the securities’ issues. In terms of nature, the Authority should be able to adopt technical standards or guidelines that could cover either areas of current L2 and/or current L3.
- Some members are of the view that there should be a definition of rule-making.

#### *Implementation of the rules*

Members discussed how the common rules should be implemented. On this issue:

- All members consider that a central body should monitor and ensure the application of the rules on Level 1-3 by the national/local authorities and exercise quality control for the consistent application of the common rules. This body can act as a standard setter for the supervision and as a mediator in cases of disagreement between national supervisors.
- All members consider that the existing mechanisms of peer review and mediation should be reinforced.

#### *Supervision*

Members discussed whether supervision should remain local. On this issue:

- Members are of the view that in general supervision is better delivered locally for reasons of e.g. proximity, better knowledge of the local market, local expertise and language and therefore should remain at the national level. However - as mentioned above under 3 - there should be an oversight of the effectiveness of local supervisors by a central body as to the exercise of their supervisory powers.
- Most members are of the view that credit rating agencies should be supervised by a central authority, whilst with regard to post-trading institutions many members

consider that possible alternative arrangements or strengthened cooperation between supervisors should be further explored.

#### *Transformation of CESR into an EU Agency/ Governance issues*

Members discussed the possible transformation of CESR into an EU Agency and on the possible governance of this Agency. Although members considered that this discussion is premature, they nevertheless expressed the following views:

- Members consider that independence of the new Authority from the EU institutions is of paramount importance, whilst recognising the need to strengthen the accountability vis-à-vis the EU institutions.
- Members consider that the new Authority should also retain its budgetary independence and might be financed by multiple different sources. Therefore, the Authority should be mainly financed by its members and should get EU financing for clearly defined projects.
- Members are not familiar with agency structures which contain the same flexibility as experienced in CESR. The commitment of the members and the deep involvement at all stages in the work of CESR have been crucial factors in achieving the results so far. These characteristics should form the basis for any transformation of CESR to ensure a further development of the competences and tasks of CESR.
- In terms of internal governance, members could envisage a system with a plenary where all members are represented and a board (Bureau) to be composed by some members on a rotation basis. However, it should be ensured that the main issues will still be discussed at the plenary level. With regard to the appointment of the Chair of the new Authority, members are of the view that the Chair should be appointed by the members of the Authority. However, some members consider that there could be an involvement of the EU institutions in the Chair's appointment (e.g. confirmation). These details could be further explored at a future stage.

#### *European Systemic Risk Council (ESRC):*

Members discussed on the creation and the intended composition of the ESRC. On these issues:

- Members are of the view that the creation of a body responsible for the macro-prudential oversight in the EU is a positive step, filling an existing gap.
- Members consider that there should be no duplication of reporting streams by supervised entities to supervisors and therefore, information should be transmitted to the ESRC by the supervisors and not directly by the supervised entities.
- Most members consider that the composition of the ESRC is large, complicated and unbalanced in favour of ECB and that more supervisory participation/representation is needed. These members are in favour of a more balanced composition on equal footing between central banks and supervisors with the possible creation of a body with limited representation and autonomous support and independent Chair. Some members support the role of the ECB, provided that further details of the system of accountability are clarified.