



CESR/CEBS/CEIOPS  
15<sup>th</sup> July 2009

## **3L3 Joint Contribution<sup>1</sup> to the European Commission's Communication on European Financial Supervision**

### *Introduction*

The three Lamfalussy Committees – CESR, CEBS and CEIOPS (“the 3L3 Committees”) - welcome the opportunity to respond to the European Commission's Communication of 27<sup>th</sup> May 2009 on European Financial Supervision.

The current financial crisis and its spread over the global financial system have revealed the critical importance of enhancing financial stability in the EU and improving the existing arrangements for European financial regulation and supervision.

In this respect, the 3L3 Committees support the objectives laid down in the Commission's Communication and, in particular, the proposals to realise a single European regulatory rulebook and to develop a European System of Financial Supervisors (ESFS), comprising three European Supervisory Authorities (“the ESAs”)<sup>2</sup>, and a European Systemic Risk Board (ESRB). In the latter case, the 3L3 Committees appreciate the importance of the Chairpersons of the ESAs being represented in ESRB and are keen to ensure an adequate balance of all important stakeholders involved.

The 3L3 Committees fully intend to continue to play an instrumental role in the follow-up to the Commission's recommendations, namely the Commission's legislative proposals, providing expert input from their know-how and experience of European financial supervision. The 3L3 Committees are of the view that the Commission's proposals should be well considered and implemented rapidly.

### *Scope of the joint contribution*

This joint contribution follows on from a previous joint contribution by the 3L3 Committees to the Commission's consultation on the improvement of supervision for the financial services sector in March 2009. Since then, the 3L3 Committees have been pleased to have been heavily involved in the assessment of the current financial market supervisory framework through active participation in discussions with the EU political institutions and have provided informal input to assist the process of transition from the three Committees to the new ESAs.

The Commission's Communication must also be read in the light of the Conclusions of the ECOFIN Council of 9<sup>th</sup> June 2009 and the Czech Presidency Conclusions from the European Council of 18<sup>th</sup>/19<sup>th</sup> June 2009, which provide the Commission with useful guidance on how to structure their forthcoming legislative proposals. In this respect, the 3L3 Committees are particularly encouraged by the overwhelming support from both the ECOFIN Council and the European Council for ensuring the independence of the ESAs. It is the 3L3 Committees' view that independence vis-à-vis the EU political institutions must be the cornerstone of any future supervisory framework as it is fundamental to offering objective technical input to the Commission. Equally, the 3L3 Committees agree with the proposal that this independence

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<sup>1</sup> With the exception of one authority, Czech National Bank, who is a member of CESR, CEBS and CEIOPS, who has requested not to be a party to this 3L3 response to the European Commission's Communication on European Financial Supervision.

<sup>2</sup> The European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) will replace the 3L3 Committees and will have the same legal personality under Community law, although they will not be EU institutions as such.

should be reinforced by accountability of the ESAs (i.e. clear reporting duties) to the Council, European Parliament and the Commission to ensure openness and transparency.

Given the close involvement of the 3L3 Committees in the negotiations to date, the purpose of this joint contribution is to focus on certain key issues.

Important among these issues is the proposed “role and responsibilities” of the ESAs in:

- Contributing to the development of a single set of harmonised rules,
- Improving the supervision of European Financial institutions, including cross border, by developing common supervisory and high quality requirements/approaches;
- Helping to settle possible disputes between national supervisors; and
- Contributing to the efficient enforcement which will be set in place in cases of manifest breach of community legislation, where the Authorities should be able to investigate issues on own initiative and if necessary adopt a recommendation for action addressed to the national supervisors. Although enforcement of agreed legislation should remain part of level 4 of the Lamfalussy framework, the ESAs could support the Commission in this task, for example by following up the implementation of the community legislation.

Also, in respect of the new tasks being proposed for the ESAs, the 3L3 Committees welcome their envisaged role in relation to *supervisory colleges*, where, in addition to the home and host supervisory authorities, they view their role as an observer that can facilitate consistent implementation of EU practice and promote supervisory convergence.

Furthermore, the 3L3 Committees welcome the ESAs' envisaged role in relation to *micro-prudential data collection and collation*. The 3L3 Committees are already collecting some data for specific exercises, like the regular risk assessments. They stand ready to develop this further, such as in the context of providing information on an aggregated and/or anonymous basis to the ESRB. The 3L3 Committees wish to point out that it is necessary to ensure an adequate EU legal basis for the exchange of information between the national authorities and the new ESAs, and to clarify for what purposes, and by whom, such information is needed.

These enhanced roles and responsibilities will result in the creation of new legal powers. The European Council Conclusions make clear that the legal powers<sup>3</sup> that will be given to the ESAs to fulfil their responsibilities, should be not only binding, but also proportionate, and should only be applied in areas specified by existing and future Community legislation. Therefore, the precise scope of the ESAs' legal powers will vary according to the existing sectoral EU Directives such as the Markets in Financial Instruments Directive, Capital Requirements Directive, the Solvency II Directive, the Institutions for Occupational Retirement Provisions Directive, and any future EU legislation in securities, banking, insurance and occupational pensions. For this reason, the 3L3 Committees will list the areas under existing Directives where legal powers could be exercised by the ESAs in relation to:

- Binding technical standards in order to ensure a single set of harmonised rules and consistent supervisory practice;
- Binding decision-making regarding disagreements between supervisors, including within colleges of supervisors, where a provisional joint agreement is impossible; and
- The prevention and management of financial crises.

These contributions will also take into account the emphasis placed by the European Council on the need for decisions taken by the ESAs not to, in any way, impinge on the fiscal responsibilities of Member States. In addition, for all these areas, we would expect the EU's Better Regulation<sup>4</sup> principles, as implemented by the 3L3 Impact Assessment Guidelines, to be embedded in the process of any such standards development. Further, clarification is required on the implementation of the binding standards nationally and how these standards fit in the

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<sup>3</sup> The 3L3 Committees implicitly recognise the limits of these powers as they would only be *de facto* regulatory powers (standard setting) since, under EU law, agencies created by an EU regulation cannot be entrusted with full regulatory powers.

<sup>4</sup> [http://ec.europa.eu/governance/better\\_regulation/index\\_en.htm](http://ec.europa.eu/governance/better_regulation/index_en.htm)

current EU legislative framework, and how assessment would be made to ensure measures do not impinge on the fiscal responsibilities of Member States.

The purpose of this joint contribution is also to provide a high-level 3L3 response with respect to two other outstanding issues raised in the Commission's Communication which are of critical importance to the 3L3 Committees, namely:

- **Independence arrangements** relating to the financial and operational structure of the ESAs; and
- **Governance** of the ESAs as regards their composition and operational structure, and accountability.

#### *Independence and Governance of the new ESAs*

The 3L3 Committees regard establishing independence from the European Commission for the new ESAs as of fundamental importance in ensuring their successful operation.

It is essential to safeguard the regulatory, supervisory, institutional and financial independence of the ESAs.

In line with the evolutionary approach taken, we appreciate a governance structure that builds upon the current structures of the 3L3 Committees and welcome the *basic building blocks for the governance of the ESAs, as outlined, namely an independent Chair, Management Board, where established, and Board of Supervisors*. The 3L3 Committees' view is that such a structure could provide a strategic steer for supervisory issues and also provide advice on budgets/staff issues of the ESAs. The 3L3 Committees stress, that for its effective operation, it remains crucial that the *exchange of confidential information between supervisory authorities is respected*, and, as such, would expect the Commission to continue in its current status as an Observer, without any voting rights, in the various ESA structures in which it would be represented.

Further, the 3L3 Committees welcome the establishment of a *3L3 Steering Committee*, and seek clarification of its role, remit and governance structure, and trust its composition be commensurate to the role attributed to it. In addition, further clarification is sought as to how financial conglomerate issues will be dealt.

Furthermore, the 3L3 Committees would expect that the EU Commission's role in endorsing binding technical standards would be a formal one, in which the Commission can endorse or reject the standards, so as not to endanger the principle of regulatory independence of the new ESAs.

Also, given the increased number of tasks that will be assigned to the 3L3 Committees in the run-up to the creation of the ESAs and necessary changes in the governance structure, the *financing* of the 3L3 Committees' activities will become increasingly important. In this respect, financing from the EU budget could be used for specific projects. However, it is nevertheless fundamentally important that the future financing of the ESAs should not, in any way, impinge on their core independence. Further, the 3L3 Committees stress that their own autonomous budgets, (which could be funded from a variety of sources,) should be governed by rules which ensure the efficiency of the ESAs and their accountability towards the Council, the Parliament and the Commission, as well as accountability to their own members.

Finally, the 3L3 Committees would like to stress that CESR, CEBS and CEIOPS are committed to continue to contribute to the process of a transition of the Committees into European Supervisory Authorities. In addition, the 3L3 Committees are supportive of the need of an assessment, in the medium term, of the functioning of the new Authorities, as proposed by the Commission. In particular, almost all CESR members are of the view that the framework now developing should be seen as a transitional arrangement, which, in the medium term, should be followed by a change to the EC Treaty allowing the new Authorities to become EU Institutions.