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(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 7 November 2008

on a draft Commission decision establishing the Committee of European Banking Supervisors

(CON/2008/63)

(2009/C 45/01)

Introduction and legal basis

On 10 October 2008, the European Central Bank (ECB) received a request from the European Commission services for an opinion on a draft Commission decision establishing the Committee of European Banking Supervisors (hereinafter the 'draft decision'). The draft decision is intended to replace the Commission Decision adopted in November 2003 ⁽¹⁾.

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community since the draft decision affects the structure and the functions of one of the EU's financial services committees and touches upon the contributory role of the European System of Central Banks (ESCB) with regard to the smooth conduct of policies relating to the prudential supervision of credit institutions and the stability of the financial system, as referred to in Article 105(5) of the Treaty. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. General observations

- 1.1. In May 2008, the Economic and Financial Affairs Council (Ecofin) invited the Commission to revise the Commission decisions on the establishment of the Level 3 Committees by giving to the Committees specific tasks to foster supervisory cooperation and convergence of their roles in assessing risks to financial stability, and Ecofin mentioned certain tasks that could be included ⁽²⁾. Reference is also made in the Ecofin conclusions to certain issues which should be taken into account in developing the role of the Level 3 Committees as regards the monitoring of risks to financial stability at EU level and Ecofin specifically invited Committee of European Banking Supervisors (CEBS) and the Banking Supervision Committee (BSC) of the ESCB to ensure an efficient and appropriate division of labour between them ⁽³⁾. Against this background, the ECB broadly welcomes the draft decision in so far as the amendments proposed by the Commission reflect the conclusions of the review of the Lamfalussy

⁽¹⁾ Commission Decision 2004/5/EC of 5 November 2003 establishing the Committee of European Banking Supervisors (OJ L 3, 7.1.2004, p. 28).

⁽²⁾ Council conclusions on the EU Supervisory Framework and Financial Stability Arrangements, as agreed by Ecofin on 14 May 2008, pp. 3-5, available at: <http://register.consilium.europa.eu/pdf/en/08/st08/st08515-re03.en08.pdf>

⁽³⁾ Council conclusions, pp. 5-6.

framework conducted in 2007 ⁽¹⁾ to which the Eurosystem also contributed ⁽²⁾. At the same time, the ECB notes that in October 2008, following recent developments in the financial markets, the European Council stressed the need to strengthen the supervision of the European financial sector with a view to improving the coordination of supervision at European level ⁽³⁾. More specifically the European Council welcomed the setting up of a high-level group by the Commission ⁽⁴⁾. In this context, the ECB emphasises that the specific comments expressed in this opinion are without prejudice to possible future contributions to the broader debate relating to the work of this high-level group.

- 1.2. The support of the ECB for the work of CEBS is reflected both in its financial and technical contributions. The current developments in the financial markets confirm and reinforce the importance of close cooperation and exchange of information between supervisory authorities and central banks, which is now broadly reflected in the close interaction between CEBS and the BSC on regular risk assessment and financial stability monitoring.
- 1.3. The ECB supports the objective of greater consistency between the Commission decisions which established the 'Lamfalussy' Committees of Supervisors (Level 3 Committees), i.e. CEBS, the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) and the Committee of European Securities Regulators (CESR) ⁽⁵⁾ and where applicable the Commission may also choose to take into account the specific comments in this opinion in relation to the draft decisions pertaining to the other two Level 3 Committees, on which the ECB is not consulted.

2. Specific comments

2.1. *New tasks allocated to CEBS (Article 4)*

With regard to the new tasks referred to in the draft decision, the ECB has the following comments.

First, the ECB supports the introduction of references in the draft decision to the role of the Level 3 Committee as regards both mediation between supervisory authorities and delegation of tasks ⁽⁶⁾. Each of the three Level 3 Committees has recently adopted a mediation mechanism designed to resolve potential disputes and strengthen mutual understanding between supervisory authorities, to enhance day-to-day cooperation between authorities and to strengthen supervisory convergence ⁽⁷⁾. Since the practical functioning of this provision is untested in practice, a review of its implementation would be desirable in due course. As regards CEBS's role in facilitating the delegation of tasks between supervisory authorities, the ECB considers that this development could prove useful for the further promotion of efficiency and effectiveness in the cross-border allocation of tasks between supervisory authorities and help streamline the interaction between cross-border banking groups and supervisory authorities.

Furthermore, the draft decision refers to the contribution of CEBS to the common and uniform implementation and consistent application of Community legislation by issuing legally non-binding guidelines, recommendations and standards ⁽⁸⁾. In view of the importance of supervisory convergence for the effective integration of the European financial system, the ECB suggests introducing a reference, among the tasks of CEBS, to the role that the committee plays in facilitating the review of the practical application of the above non-binding measures through the use of peer review tools.

⁽¹⁾ Communication from the Commission, Review of the Lamfalussy process — Strengthening supervisory convergence, COM(2007) 727 final.

⁽²⁾ Eurosystem contribution to the review of the Lamfalussy framework, November 2007, available on the ECB's website at: www.ecb.int

⁽³⁾ Presidency Conclusions, European Council, 15-16 October 2008, paragraph 8. The conclusions are available at: http://www.consilium.europa.eu/cms3_applications/Applications/newsRoom/related.asp?BID=76&GRP=14127&LANG=1&cmsId=339

⁽⁴⁾ See Communication from the Commission 'From financial crisis to recovery: A European framework for action', COM(2008) 706 final, 29 October 2008, available at: http://ec.europa.eu/commission_barroso/president/pdf/COMM_20081029.pdf

⁽⁵⁾ See recital 6 of the draft decision.

⁽⁶⁾ See recital 14 and Article 4(1)(a) of the draft decision (on mediation) and recital 17 and Article 4(1)(d) of the draft decision (on delegation).

⁽⁷⁾ See the Protocol on mediation mechanism of the CESR, CESR/06-286b, August 2006 on CESR's website at: <http://www.cesr-eu.org>, the Protocol of the CEBS mediation mechanism, 25 September 2007 on CEBS's website at: <http://www.c-ebis.org>, and the Protocol on mediation mechanism between insurance and pensions supervisors, CEIOPS-DOC-14/07, October 2007 on CEIOPS's website at: <http://www.ceiops.eu>

⁽⁸⁾ Article 3 of the draft decision.

Second, the ECB notes that, in line with the Ecofin conclusions adopted on 14 May 2008, the Commission provides for a role for CEBS in setting operational guidelines to ensure the efficient and consistent functioning of colleges of supervisors ⁽¹⁾. This echoes the current initiative in the context of the review of the Capital Requirements Directive ⁽²⁾ aimed at enhancing the legal underpinnings of colleges of supervisors. In this respect, the ECB would like to stress the importance of ensuring consistency between the provisions of the draft decision and those of the abovementioned directive.

2.2. Cooperation between CEBS and the BSC (Article 5)

In line with the Ecofin mandate to ensure an efficient and appropriate division of labour between CEBS and the BSC ⁽³⁾, in its draft decision the Commission points out the need to prevent overlaps between the tasks of the two committees ⁽⁴⁾. The Commission has agreed that this division of tasks could be based, to a certain extent, on making a distinction between macro and micro prudential analyses ⁽⁵⁾. In this respect and as stated in a previous opinion, the ECB stresses the importance of recognising the role of the BSC, which has already developed a framework for monitoring macro-prudential developments ⁽⁶⁾. The draft decision refers to the fact that, in order to safeguard financial stability, a system is needed at the level of the committees of supervisors to identify potential risks across borders and across sectors at an early stage and that CEBS has a role to play in this respect by identifying micro-prudential risks in the banking sector and regularly reporting on the outcome ⁽⁷⁾. Against this background, the ECB has the following comments.

First, the ECB highlights that the reference in the draft decision to the interaction between the BSC and CEBS should have a more positive tone, reflecting the existing cooperation between the three Level 3 Committees and the BSC. Therefore, in the draft decision instead of mentioning the need to prevent overlaps with the work of the BSC, emphasis could be put on the need for a close interconnection between these committees and the BSC ⁽⁸⁾.

Moreover, CEBS and the BSC have already agreed on the organisation of their interaction on regular risk assessments and financial stability monitoring, aimed at avoiding duplication of work. While, in line with its mandate, the BSC focuses on identifying the main prudential risks for the financial system and the banking sector, CEBS focuses on the proactive identification of specific risks, supervisory concerns and possible policy actions.

Second, under the draft decision, CEBS is required, where necessary, to 'alert the other Committees of Supervisors, finance ministries and national central banks about potential or imminent problems, so as to ensure timely preventative or remedial action' ⁽⁹⁾. The ECB suggests that this provision should be clarified in order to avoid possible problems of confidentiality in the event of the transmission of supervisory information on individual banks to finance ministries.

⁽¹⁾ Article 4(1)(e) of the draft decision.

⁽²⁾ Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management, COM(2008) 602 final. The Capital Requirements Directive is understood as comprising Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (OJ L 177, 30.6.2006, p. 1) and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) (OJ L 177, 30.6.2006, p. 201).

⁽³⁾ Council conclusions on the EU Supervisory Framework and Financial Stability Arrangements, as agreed by Ecofin on 14 May 2008, available at:

<http://register.consilium.europa.eu/pdf/en/08/st08/st08515-re03.en08.pdf>

⁽⁴⁾ Recital 21 and Article 5(5) of the draft decision.

⁽⁵⁾ European Commission (DG Internal Market), Public Consultation Paper on amendments to Commission Decisions establishing CESR, CEBS & CEIOPS, 23 May 2008, p. 11, available at:

http://ec.europa.eu/internal_market/finances/docs/committees/consultation_en.pdf

⁽⁶⁾ Paragraph 7 of ECB Opinion CON/2004/7 of 20 February 2004 at the request of the Council of the European Union on a proposal for a Directive of the European Parliament and of the Council amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 93/6/EEC and 94/19/EC and Directives 2000/12/EC, 2002/83/EC and 2002/87/EC of the European Parliament and of the Council, in order to establish a new financial services committee organisational structure (OJ C 58, 6.3.2004, p. 23).

⁽⁷⁾ Recital 20 and Article 5(2), first paragraph of the draft decision.

⁽⁸⁾ The close cooperation between CEBS and the BSC is already reflected in the revised CEBS Charter which took effect on 10 July 2008 and which is available on CEBS's website at: <http://www.c-eps.org> (see, for instance, Articles 1(4), 4(5) and 6(4) of the CEBS Charter).

⁽⁹⁾ Article 5(1) of the draft decision.

Third, the draft decision provides that, at least quarterly, CEBS should provide its assessment of key risks and vulnerabilities in the banking sector to the Commission, the Economic and Financial Committee (EFC) and the European Parliament ⁽¹⁾. The BSC's experience as regards the communication of the results of its macro-prudential analysis to the EFC suggests that biannual reporting would be more appropriate in normal times.

2.3. *Financial conglomerates (Article 11)*

The draft decision provides that cooperation between CEBS and CEIOPS in the area of supervision of financial conglomerates will be exercised in a Joint Committee on Financial Conglomerates. As the ECB already participates in the work of the existing Interim Working Committee on Financial Conglomerates, as well as the European Financial Conglomerates Committee, its participation as an observer should be mentioned together with the Commission and CESR.

2.4. *Qualified majority voting (Article 14)*

On 7 October 2008, Ecofin welcomed the agreement reached by supervisory authorities in the Level 3 committees to include decision-making by qualified majority in their respective charters ⁽²⁾. The draft decision provides that CEBS's decisions will 'require 1. at least a quota of 255/345 of the weighted votes and 2. a simple majority of the Member States' ⁽³⁾. By contrast, CEBS's Charter provides that 'decisions shall require at least 255 votes in favour, cast by at least two-thirds of the Member States'. The ECB notes that both procedures are provided for under the Treaty provisions on qualified majority voting ⁽⁴⁾. However, for the sake of legal clarity, the ECB recommends ensuring consistency between the voting rules of the draft decision and those of the CEBS charter, which might require introducing direct references to the relevant Treaty provisions in the draft decision.

3. **Drafting proposals**

Where the above proposals would lead to changes in the draft decision, drafting proposals are set out in the Annex.

This opinion will be published on the ECB's website once the Commission has adopted and published the decision establishing the Committee of European Banking Supervisors.

Done at Frankfurt am Main, 7 November 2008.

The Vice-President of the ECB

Lucas D. PAPADEMOS

⁽¹⁾ Article 5(2) of the draft decision.

⁽²⁾ Council conclusions, as agreed by Ecofin on 7 October 2008, available at: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ecofin/103250.pdf

⁽³⁾ Article 14 of the draft decision.

⁽⁴⁾ Article 205(2) of the Treaty (as last amended in connection with the accession of Bulgaria and Romania to the European Union) provides for two options. Depending on the type of act of the Council, i.e. whether the Treaty requires the act to be adopted on a proposal from a Commission or not, decisions require for their adoption at least 255 votes in favour, cast either (i) by a majority of the members or (ii) by at least two-thirds of the members respectively.

ANNEX

DRAFTING PROPOSALS

Text proposed by the Commission	Amendments proposed by the ECB
<p>Amendment 1 Recital 21 of the draft decision</p>	
<p>(21) In order to adequately deal with cross-sector issues, the work of the Committee should be closely interconnected with the activities of the Committee of European Insurance and Occupational Pensions Supervisors and the Committee of European Securities Regulators. This is of particular importance in addressing possible cross-sectoral risks to financial stability. Specific attention should be given to preventing overlaps with the work of the Banking Supervisory Committee of the European System of Central Banks.</p>	<p>(21) In order to adequately deal with cross-sector issues, the work of the Committee should be closely interconnected with the activities of the Committee of European Insurance and Occupational Pensions Supervisors and the Committee of European Securities Regulators. This is of particular importance in addressing possible cross-sectoral risks to financial stability. Specific attention should be given to preventing overlaps with the work of the Banking Supervisory Committee of the European System of Central Banks. The Committee shall also closely liaise with the Banking Supervision Committee of the European System of Central Banks.</p>
<p><i>Justification</i> — See paragraph 2.2 of the opinion</p>	
<p>Amendment 2 (new) Article 4(1)(g) of the draft decision</p>	
	<p>(g) Facilitate the review of the practical application of the legally non-binding guidelines, recommendations and standards adopted by the Committee.</p>
<p><i>Justification</i> — See paragraph 2.1 of the opinion</p>	
<p>Amendment 3 Article 5(2) of the draft decision</p>	
<p>2. The Committee shall, at least quarterly, provide assessments of micro-prudential developments, risks and vulnerabilities in the banking sector to the Commission, the Economic and Financial Committee and the European Parliament.</p>	<p>2. The Committee shall provide, at least quarterly, biannual assessments of micro-prudential developments, risks and vulnerabilities in the banking sector to the Commission, the Economic and Financial Committee and the European Parliament.</p>
<p><i>Justification</i> — See paragraph 2.2 of the opinion</p>	
<p>Amendment 4 Article 5(4) of the draft decision</p>	
<p>4. The Committee shall closely cooperate with the Committee of European Insurance and Occupational Pensions Supervisors and the Committee of European Securities Regulators to ensure an adequate coverage of cross-sectoral developments, risks and vulnerabilities.</p>	<p>4. The Committee shall closely cooperate with the Committee of European Insurance and Occupational Pensions Supervisors and, the Committee of European Securities Regulators and the Banking Supervision Committee of the European System of Central Banks to ensure an adequate coverage of cross-sectoral developments, risks and vulnerabilities.</p>
<p><i>Justification</i> — See paragraph 2.2 of the opinion</p>	

Text proposed by the Commission	Amendments proposed by the ECB
Amendment 5	
Article 5(5) of the draft decision	
5. The Committee shall pay specific attention to the prevention of overlaps with the work of the Banking Supervisory Committee of the European System of Central Banks.	5. The Committee shall pay specific attention to the prevention of overlaps with the work of the Banking Supervisory Committee of the European System of Central Banks.
<i>Justification</i> — See paragraph 2.2 of the opinion	
Amendment 6	
Article 11 of the draft decision	
Cooperation in the area of supervision of financial conglomerates between the Committee and the Committee of European Insurance and Occupational Pensions Supervisors shall be exercised in a Joint Committee on Financial Conglomerates. The Commission and the Committee of European Securities Regulators shall be invited to participate in the Joint Committee on Financial Conglomerates as observers.	Cooperation in the area of supervision of financial conglomerates between the Committee and the Committee of European Insurance and Occupational Pensions Supervisors shall be exercised in a Joint Committee on Financial Conglomerates. The Commission, the Committee of European Securities Regulators and the European Central Bank shall be invited to participate in the Joint Committee on Financial Conglomerates as observers.
<i>Justification</i> — See paragraph 2.3 of the opinion	