

Commission consultation paper on changes to the Decisions establishing CEBS, CEIOPS and CESR > UK response

Introduction

1. The United Kingdom authorities (HM Treasury, Financial Services Authority) submit this paper as a response to the Commission's Public Consultation Paper on Amendments to Commission Decisions establishing CESR, CEBS & CEIOPS. This response has also been agreed with the Bank of England and the Pensions Regulator.
2. The UK authorities ("the UK") strongly believe the Lamfalussy arrangements, and in particular the Level 3 Committees have made a strong positive contribution to the EU's regulatory and supervisory framework. In considering changes to this framework, we are supportive of moves that reduce unnecessary divergences or duplication in EU markets and their regulation and supervision, and support proportionate action to ensure that the Single Market functions well.
3. The UK continues to believe that the most appropriate form of supervision for the single market remains at Member State level, with national supervisors cooperating to ensure that markets function effectively and appropriately. Such an approach allows for the differences in the EU's retail financial markets in particular, which we believe will remain characterised by differences in national cultures and consumer preferences. Even in wholesale markets, the most appropriate supervisory tools may depend on national or group specific differences. Given these differences, which cannot simply be legislated away, supervisory convergence is premised on the fact that supervision remains a national competency and that convergence focuses on achieving similar regulatory outcomes, and not on the harmonisation of supervisory tools and the circumstances and intensity with which they are used. Indeed, recent events in financial markets have highlighted that national accountability remains a critical part of both ongoing and crisis supervision.
4. Therefore the UK is very supportive of moves that maintain the current institutional balance, but reinforce the current institutional structures, and the proposal to align the Commission Decisions establishing the three Lamfalussy Level 3 committees, consistent with the May Ecofin conclusions. These Conclusions call for a variety of tasks to be specified in the Decisions, but underline that the legal status of the committees should not be changed, and stress the need to maintain the current institutional structure of the committees, and not reduce the accountability of supervisors. We support specifying these tasks in the Decisions to introduce greater consistency between the Level 3 committees. Separate to the Decisions, we also support (and have strongly advocated) changes that improve the functioning of the three Level 3 committees, such as the introduction of qualified majority voting, coupled with comply or explain procedures. However we are strongly opposed, for example, to changes

that could lead to giving the Committees decision-making or enforcement powers over national regulators.

5. In considering our response to this consultation, we note that the May Ecofin specifically called for the inclusion of a number of tasks, as follows: (i) mediation between supervisory authorities to help in solving possible disagreements, in particular within colleges; (ii) facilitating adequate information exchange between supervisors; (iii) providing non-legally binding guidelines and recommendations as well as guidance for national supervisory authorities in order to ensure convergence of practices, supervisory approaches and financial reporting among the EU supervisors; (iv) the development of a common European supervisory culture through training and staff exchange; (v) ensuring efficient cooperation across financial sectors between the EU Committees of Supervisors; and (vi) monitoring of financial stability and reporting on risks to the EFC.
6. We believe that any changes to the Decisions should be considered in light of these tasks. Given the lengthy process of discussion on the Level 3 Committees, and the subsequent agreement of new tasks to be explored, any changes to the Decisions that Ministers have not requested should not be considered as part of this process. The UK authorities cannot support the additional ideas floated in the paper, as these have been discussed but not agreed by Ecofin Ministers.
7. The following sections detail our views on the specific issues raised in the consultation.

Section 3: Supervisory cooperation and convergence

8. The UK strongly believes that supervisory convergence is desirable however such convergence needs to focus on achieving equivalent outcomes in order that an integrated EU market can work efficiently and effectively. The consultation paper states that a task of the three Level 3 committees is their contribution to the timely and consistent implementation of Community legislation in the Member States, through the coherent implementation and application of supervisory rules. We agree the three Level 3 committees have a strong role to play in this process. However the implementation of EU legislation will be for Member States to take forward, and for the Commission to ensure it is implemented properly. The Level 3 Committees are not, and should not be, the overseer or supervisor of national regulators.

Mediation

9. The UK supports the three Level 3 committees providing a mediation mechanism, such as the one they already provide for their members. However we do not agree that recourse to mediation is a measure of success, or that supervisors should be positively encouraged to go down this route. Instead we believe the limited use of the mediation mechanism demonstrates that supervisors have so far been very successful in

resolving their differences. We are not persuaded therefore that changes to the existing mediation mechanisms established by the Committees are necessary. Indeed the CEBS and CEIOPS mechanisms have only recently been put in place.

10. Furthermore, the consultation paper confuses mediation with arbitration and consultation. Mediation is a non-binding process facilitated by a few members of the relevant Level 3 committee, on a voluntary basis. We do not agree that mediation be widened to include the whole of the Level 3 committee, that it should be obligatory, or that the outcomes of mediation should be binding.
11. Therefore we could support a reference to mediation in the Decisions, provided it is clear that this is non-binding, non-obligatory, and is not a task conferred on the Committee, but instead a responsibility on the Committee to ensure that effective mediation mechanisms exist.
12. The UK notes that references in Solvency II and in the proposed revisions to CRD to the role, which the Level 3 committees might play as regards the provision of advice to national supervisors, may also confuse mediation with consultation.

Consultative role

13. The UK sees no role for the three Level 3 committees providing an obligatory consultation role (which is distinct to a mediation role). If a supervisor is making decisions that affect a third party, there should be consultation with interested parties and information should be shared. However, an obligation in legislation to consult does not mean consulting the Level 3 Committee. Giving the Level 3 Committees an explicit consultative role with respect to certain decisions of supervisory authorities goes far beyond the role envisaged for Level 3, in which the Committees provide guidance and advice on general issues, including standards of good practice and consistent implementation of Directive provisions. To have Level 3 committees inputting into the operational decisions of supervisors in respect of individual cases would not be consistent with the Ecofin conclusions, which are focused on general issues. The Commission has already acknowledged that its proposal to include such a role in Solvency II has received a negative response in Council.
14. We do not therefore support including a general consultative role in the three Level 3 committees' Decisions, and have serious doubts about its value in the sectoral Directives.

Information exchange

15. It is important that supervisors exchange information on the firms that they supervise, where it is relevant to the other supervisors business. We believe that information exchange about specific institutions should occur bilaterally or within the Colleges established for that purpose. It is not clear

from the consultation paper what is proposed for the Level 3 Committees, as regards information exchange. In particular we would note that information is a wider concept than just data captured by regulatory reporting. We believe the Level 3 Committees could usefully add value here by focusing on qualitative information, for example identifying for example market trends in respect of financial stability. We do not see them as having a formal role to play in reporting or discussing individual institutions.

16. We therefore only support a general information exchange requirement in the Decisions, in line with the Conclusions of May's Ecofin.

Delegation of tasks and responsibilities

17. We support the voluntary delegation of tasks between supervisors, and the Level 3 committees could possibly play a role in facilitating such delegation. However the delegation of responsibilities is a more complex issue, and raises many more fundamental questions, which are not for the Level 3 committees to solve at the European level but for co-decision, and should not be included in the Decisions. Neither do we see either as a priority for the Level 3 committees.

18. We therefore only support the inclusion of the facilitation of voluntary task delegation between supervisors in the Decisions, and not the delegation of responsibilities.

Streamlining reporting requirements

19. While it may be desirable to standardise the reporting requirements of internationally active firms, such work must be weighed against the potentially significant costs that a change in reporting requirements would bring on firms that operate only domestically. Such costs are likely to be both significant one-off costs and potentially recurring ones as well.

20. Therefore any Level 3 role in standardising reporting requirements would need to reflect the different position of internationally active and domestic providers, to ensure that there are not disproportionate costs imposed on firms or a significant sub-set of firms, whether that sub-set is defined by geographical market, or other relevant characteristics.

21. Further, such a change to the Decisions would need a direct mandate from the Council. A change to the Decisions establishing the Level 3 committees in respect of reporting requirements was not mandated in the May 2008 Ecofin Conclusions.

22. We therefore do not support this proposed change.

Colleges of supervisors

23. The UK firmly supports the establishment of Supervisory Colleges, for significant internationally active firms. In Europe, we have proposed they be established in legislation.
24. By providing a structured framework for information collection and exchange, the establishment of regulatory programmes and the delegation of tasks, colleges can bring clear benefits for the prudential supervision of groups. We believe that Colleges must be tailored to the individual firm, so that they directly meet the supervisory challenges posed by the firm. However we strongly believe that Supervisory Colleges should not change the roles and responsibilities of the home/host supervisors as established in EU legislation. However Colleges will facilitate discussions on issues covering the supervision of a group, enable greater common understanding when the relevant supervisors take decisions, and promote the sensible delegation of tasks.
25. We see a role for the three Level 3 Committees in providing guidance for colleges, as requested by December's Ecofin. However such guidance will need to be non-prescriptive, recognising that college arrangements will necessarily be bespoke. As a result, we do not see an oversight role for the Level 3 committees, as that would be inconsistent with the non-binding nature of the guidance.
26. Therefore we do not support the inclusion of an oversight role of colleges for the Committees in the Decisions. Nor do we support the inclusion of the provision of guidance for Colleges in the Decisions.

Development of a common supervisory culture

27. We agree that the three Level 3 Committees have a role to play in developing a common European supervisory culture, which in turn will facilitate effective cooperation and collaboration.
28. However we do not agree that differences in how supervisors supervise result in a material obstacle to the single market. Rather, different supervisory practice can reflect differences in market structure, market behaviour and local culture, which are valued to firms and consumers. A common supervisory culture thrives on that diversity of practices and experiences. Developing a common supervisory culture does have real value because it facilitates effective collaboration and by reinforcing common values and principles it will help provide for similar regulatory outcomes.
29. The tools, which the Committees already have in train, sectoral and cross-sectoral common training and inter-supervisory authority staff exchanges, should deliver that objective.
30. We support the inclusion of a role for the three Level 3 Committees in developing a common, but not a single, supervisory culture.

Cross-sectoral cooperation

31. We agree that developing cross-sectoral cooperation is an important necessary step and welcomed the publication of the 3L3 Joint Protocol in 2005.
32. We agree that some general wording supporting joint Level 3 work could be usefully included in the Commission Decisions establishing the three Level 3 Committees but do not believe that anything more than this is necessary.

Financial stability

33. We support the three Level 3 Committees playing a role in ensuring financial stability, through an early warning mechanism. Such a mechanism could usefully provide warning of imminent or possible aggregate threats to financial stability arising out of environmental issues or market trends for example. However it is important that this work does not supplant that of the Colleges or Cross Border Stability Groups, and therefore that it remain aggregate qualitative information only, as requested by Ecofin. The three Level 3 Committees should not report on individual firms. Further the degree of prescription, which appears to be envisaged by the Commission's proposal, may not be practical or achievable, and lacks justification. Greater consideration must be given to what the Level 3 Committees may reasonably do in this sphere.
34. We therefore support only a role for the three Level 3 Committees in providing an early warning mechanism, for example on market trends etc.

Other issues

35. The Commission paper mixes up possible tasks for the three Level 3 committees to undertake in facilitating convergence etc with the operational arrangements under which the committees undertake their work. These operational arrangements should not form part of the Commission Decisions, again reflecting the voluntary nature of the three Level 3 committees. Ecofin conclusions have been very careful to retain independence of national supervisors in the language used on voting in committees and their work programmes.
36. This view is reinforced in the comments below.

Qualified majority voting

37. In general terms we are very supportive of efforts to enable the three Level 3 Committees to perform effectively. In particular, we strongly support May's Ecofin Conclusion on majority voting, which recognised that the three Level 3 Committees should continue to make their decisions by consensus wherever possible, but requested that they introduce into

their charters the possibility to apply qualified majority voting where necessary, with a comply or explain procedure.

38. Our preference for consensus where possible remains, and we are disappointed not to see this reflected in the consultation paper.
39. As regards the possible inclusion of voting arrangements in the Commission Decisions establishing the Committees, we oppose including such detail of how the Committees function in practice. The May Ecofin Conclusions called for specific changes to be made to the Decisions. These changes, correctly, did not include majority voting. We believe that such operational changes are for the Committees to take forward themselves. We have already seen the three Level 3 Committees make modifications to their charters to include the possibility of majority voting. This is welcome.
40. We do not therefore support the inclusion of majority voting in the three Level 3 Decisions.

Annual work programmes

41. In a similar vein to the paragraph above, the inclusion of reporting on their annual work programmes was not included in the May Ecofin Conclusions, which called only for specific changes to be made to the Decisions.
42. The submission of annual work programmes is an operational issue and we do not support its inclusion in the Commission Decisions.