OPINION OF THE EUROPEAN CENTRAL BANK

of 20 February 2004


(CON/2004/7)

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2. The ECB’s competence to deliver an opinion is based on the first indent of Article 105(4) of the Treaty establishing the European Community since the proposed directive concerns the EU’s financial services committee structure and affects prudential supervision and the stability of the financial system. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council of the ECB has adopted this opinion.

3. The proposed directive is part of a package of measures adopted by the Commission to implement the Council’s recommendation, based on the Report of the Council’s Economic and Financial Committee on financial regulation, supervision and stability, to extend the so-called Lamfalussy process for financial regulation from the securities to the banking, insurance, occupational pensions and investment funds (UCITS) sectors. The Lamfalussy process is based on a four-level approach. At Level 1 legal acts are adopted by the European Parliament and the Council under the co-decision procedure. This legislation contains the framework principles reflecting the basic political choices and defines the extent of the Commission’s implementing powers. Level 2 covers the legislation adopted by the Commission with the assistance of so-called ‘Level 2 committees’ composed of representatives from the Member States. This level of legislation contains the technical implementing measures necessary to make the principles of Level 1 legislation operational. These technical measures are prepared on the basis of the work of so-called ‘Level 3 committees’ composed of high-level representatives from the national supervisory authorities. Level 3 committees also have the role of enhancing cooperation among and converging the supervisory practices of the competent national authorities. Finally, at Level 4 the Commission and the Member States act to strengthen the enforcement of Community law.

Following the Stockholm Council’s approval of the recommendations in the report of the Committee of Wise Men on the Regulation of European Securities Markets, the Commission adopted two Decisions (1) on 6 June 2001 establishing the European Securities Committee (ESC) at Level 2 and the Committee of European Securities Regulators (CESR) at Level 3. A second Level 2 committee in the financial sector, the Financial Conglomerates Committee (FCC), was established by Directive 2002/87/EC (2).

4. The proposed directive together with the decisions adopted by the Commission aim to establish two new Level 2 committees and two new Level 3 committees.

The European Banking Committee (EBC) and the European Insurance and Occupational Pensions Committee (EIOPC) will be established as Level 2 committees (3). The EBC and


5. The ECB welcomes the extension of the Lamfalussy process for the financial conglomerates' issues — will advise the Commission on policy issues and on Commission proposals in the banking and insurance fields respectively. They will also assist the Commission in the exercise of its implementing powers at Level 2. The EBC and EIOPC will replace the existing Banking Advisory Committee and the Insurance Committee respectively. The ECB — similarly to the ESC and the FCC — will participate in the EBC as an observer.

Furthermore, the current responsibilities of the UCITS Contact Committee in assisting the Commission for implementing measures in the UCITS sector will be transferred to the ESC.

The objective of the proposed directive is to replace references in Community legislation to the previous committee structure in the banking, insurance and UCITS sector with references to the EBC, EIOPC and ESC respectively. The Commission Decisions establishing the EBC and the EIOPC and extending the role of the ESC will enter into force once the European Parliament and the Council adopt the proposed directive.

At Level 3, the Committee of European Banking Supervisors (CEBS) and the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) have been established with effect from 1 January 2004 (5) and 24 November 2003 (6) respectively. The role of the CEBS and the CEIOPS is to advise the Commission on implementing measures in their respective fields, to contribute to the convergence of supervisory practices and to enhance supervisory cooperation, including the exchange of information on individual supervised institutions. In line with the recommendations of the Report of the Economic and Financial Committee, the central banks which are not directly involved in the supervision of individual credit institutions, including the ECB, are members of the CEBS without voting rights.

Finally, the UCITS Contact Committee's current responsibilities for Level 3 work will be transferred to the CESR once the proposed directive is adopted (7).

6. Extending the Lamfalussy process to all financial sectors also provides an opportunity for creating a more harmonised and simplified regulatory framework. In this regard, the ECB would like to underline the desirability of achieving further progress in developing a more consistent set of European rules for financial institutions. The recommendations of the IIMG's second interim report point in the same direction. This report states that Level 1 measures should be limited to framework principles only and Level 2 measures should contain unambiguous rules to ensure consistent implementation in Member States. In addition, the report indicates that more frequent use should be made at Level 2 of regulations. It also recommends limiting the use of directives at this level to cases where fundamental considerations make the use of regulations undesirable, or where the need for national legislation is demonstrated. The ECB supports these recommendations. Their implementation could gradually lead to Level 2 acts emerging as the main body of technical rules applicable to EU financial institutions. At the same time, those aspects that could be more appropriately dealt with in EU legislation could be transferred from national legislation to Level 2 acts. The ECB is convinced that such a harmonised, simplified set of European rules would contribute significantly to further integrating financial markets, would considerably reduce regulatory costs for financial institutions and would enhance consumers' rights in relation to financial services. In the new regulatory process extensive consultations with market participants will be essential in identifying any remaining obstacles to financial market integration and devising regulatory solutions to overcome them.

7. With regard to the Level 2 Committees, the ECB particularly appreciates the measures put forward concerning the banking sector. The proposed directive correctly emphasises the EBC’s regulatory focus, acknowledging the significant progress made on supervisory cooperation in the EU since the First and Second Banking Directives (7). Moreover, the establishment of the CEBS at Level 3 will provide a platform

for further enhancing and strengthening such cooperation. In this context, the ECB notes the proposed deletion of Article 59 of Directive 2000/12/EC (8), regarding observation ratios for solvency and liquidity. The ECB agrees with this proposal and supports the rationale for the deletion provided in the explanatory memorandum: observation ratios for solvency are now largely redundant taking into account the solvency ratio defined in the Directive, and the establishment of observation ratios for liquidity is outdated in view of developments in banks’ liquidity risk management. Furthermore, the monitoring of solvency and liquidity is more appropriately dealt with at the competent authorities and central banks level, considering the exchange of information that this activity requires of them. The ECB notes in this respect that it is essential to recognise the role of the European System of Central Banks’ Banking Supervision Committee (BSC), which has already developed a framework for the monitoring of macro-prudential developments.

8. With regard to the new Level 3 committees, the ECB considers that they will strengthen supervisory cooperation in all financial sectors and will ensure a more consistent implementation of both Level 1 principles and Level 2 technical rules. Furthermore, cooperation at Level 3 will contribute to greater supervisory convergence through the establishment of common standards and agreed best practices thus improving the overall supervision of financial institutions and groups operating throughout the EU, while reducing the burden of supervisory compliance. In increasingly integrated markets closer cooperation among the relevant authorities will make it easier to monitor threats to the safety and soundness of financial institutions and risks to financial stability. In this context, the ECB strongly welcomes the fact that the Commission Decision establishing the CEBS recognises the specific features of supervisory cooperation in banking. Close and effective cooperation between central banks and supervisory authorities is crucial for the promotion of financial stability. Banking activities entail a systemic risk that affects the heart of central banks’ interests, owing to its impact on payment systems and monetary policy operations. Strengthening cooperation between central banking and supervisory functions on a day-to-day basis is a precondition for ensuring smooth cooperation in the event of a crisis. Therefore, the ECB is glad to see this crucial role of central banks, irrespective of the breadth of their involvement in the actual conduct of prudential supervision, reflected in the CEBS’s composition.

9. Finally, the ECB would draw attention to the fact that, as stated in the explanatory memorandum of the proposed directive, implementing the extension of the Lamfalussy process to all financial sectors is a matter of some urgency in view of the measures that still have to be adopted in the framework of the Financial Services Action Plan. The new process will be particularly important in ensuring that implementation of the forthcoming EU regulatory framework on capital adequacy in the banking sector is in parallel and consistent with the new Basel Accord, thus avoiding competitive disadvantages for EU financial institutions. Moreover, the Lamfalussy process will establish the basic conditions for the effective implementation and enforcement of the Community law measures already adopted within the Financial Services Action Plan in order to reap the full benefits of this initiative. The need to enhance the flexibility of the legislative process, to simplify EU regulation, to achieve greater consistency in the implementation and enforcement of EU rules and to strengthen supervisory cooperation will become even more urgent when the EU comprises 25 Member States.

Done at Frankfurt am Main, on 20 February 2004.

The President of the ECB

Jean-Claude TRICHET