EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

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 (COM(2003) 659 final)

(CON/2004/7)

(2004/C 58/11)

1. On 18 November 2003 the European Central Bank (ECB) received a request from the Council of the European Union for an opinion 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 (hereinafter the ‘proposed directive’).

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

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(1) Commission Decision 2001/527/EC of 6 June 2001 establishing the Committee of European Securities Regulators (OJ L 191, 13.7.2001, p. 43), as amended by Decision 2004/7/EC (OJ L 3, 7.1.2004, p. 32), and Commission Decision 2001/528/EC of 6 June 2001 establishing the European Securities Committee (OJ L 191, 13.7.2001, p. 45), as amended by Decision 2004/8/EC (OJ L 3, 7.1.2004, p. 33).

(2) Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

(3) Commission Decision 2004/9/EC of 5 November 2003 establishing the European Insurance and Occupational Pensions Committee (OJ L 3, 7.1.2004, p. 34) and Commission Decision 2004/10/EC of 5 November 2003 establishing the European Banking Committee (OJ L 3, 7.1.2004, p. 36).

EIOPC — like the ESC in the securities sector and the FCC 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 [4] and 24 November 2003 [5] 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 [6].

5. The ECB welcomes the extension of the Lamfalussy process from the securities sector to the banking, insurance, occupational pensions and UCITS sectors. As the Inter-institutional Monitoring Group (IIMG) also points out in its second Interim Report, the Lamfalussy process is making a positive contribution to the swift and flexible regulation of EU securities markets and is suitable for legislation in any financial sector. The ECB shares this view and therefore fully supports the measures that the Commission has put forward. With an appropriate interinstitutional agreement safeguarding the rights of the Community institutions involved, extending the Lamfalussy process will lead to a more efficient and transparent legislative process in all financial sectors. It will facilitate the adoption of a quick and effective regulatory response to market developments.

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

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

(5) Commission Decision 2004/6/EC of 5 November 2003 establishing the Committee of European Insurance and Occupational Pensions Supervisors (OJ L 3, 7.1.2004, p. 30).

(6) See Commission Decisions 2004/7/EC and 2004/8/EC as referred to in footnote 1.

(7) First Council Directive 77/780/EEC of 12 December 1977 on the coordination of the laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (OJ L 322, 17.12.1977, p. 30, repealed by Directive 2000/12/EC of the European Parliament and of the Council). Second Council Directive 89/646/EEC of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC (OJ L 386, 30.12.1989, p. 1). Both Directives have now been codified as Directive 2000/12/EC.

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

[8] Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions (OJ L 126, 26.5.2000, p. 1). (Directive as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustment to the Treaties on which the European Union is founded — Annex II: List referred to in Article 20 of the Act of Accession — 3. Freedom to provide services (OJ L 236, 23.9.2003, p. 335).