FINANCIAL SUPERVISION COMMITTEES

Status: 30.04.09

MAIN ISSUES

Objective of the Decisions: The Commission is to extend the tasks of the EU Committees for financial market supervision and thus facilitates closer cooperation between national supervisory authorities. For this purpose it wants to provide EU funding.

Parties Affected: Financial service providers and national financial supervisory authorities.

Pros: (1) Strengthening cooperation between national supervisory authorities in CEBS, CESR and CEIOPS improves the quality of supervision, in particular of financial service providers operating at cross-border level.
(2) Extending the Committees' responsibilities to include the supervision of financial market stability is to be welcomed in view of the close global ties of the financial markets.

Cons: –

CONTENT

Title

Commission Decisions 2009/77/EC to 2009/79/EC of 23 January 2009 **establishing the Committees of European Securities Regulators (CESR), of the European Banking Supervisors (CEBS) and of the European Insurance and Occupational Pensions Supervisors (CEIOPS)**; as well as
Proposal COM(2009) 14 for a **Decision** of the European Parliament and of the Council of 23 January 2009 **establishing a Community programme** to support specific activities **in the field of financial services**, financial reporting, and auditing

Brief Summary

Unless otherwise provided for, articles refer to the largely identical decisions 2009/77/EC to 2009/79/EC.

- **Object and context of the decisions**
  – The Commission's Decisions 2009/77/EC, 2009/78/EC and 2009/79/EC, which have already come into force, amend the tasks and decision-making rules of the Committees of the European Securities Regulators (CESR) and the European Banking Supervisors (CEBS), both established in 2001, and the Committee of the European Insurance and Occupational Pensions Supervisors (CEIOPS), established in 2004, each of which consists of representatives of the competent national authorities.
  – The proposed Decision COM(2009) 14, which must be adopted by the European Parliament and the Council, aims to contribute to the financial means of these Committees through EU funding.

- **Background: European financial markets regulation in accordance with the Lamfalussy process**
  – Since 2001, the Lamfalussy process has been applied to the European regulation of securities, banking and insurance markets. This four-level legislative procedure is to improve the quality of legislation and promote the integration of financial markets and to harmonise European supervisory practices for financial markets. It is designed as follows:
    - First, the European Parliament and the Council adopt a framework directive (level 1).
    - The Commission then substantiates it by adopting technical and detailed implementing measures upon the assent of a committee consisting of experts from national ministries of finance (level 2). In doing so, it is advised by CESR, CEBS and CEIOPS.
    - CESR, CEBS and CEIOPS work to coordinate possible conflicts between national financial supervisory authorities to achieve a uniform supervisory practice in the European Union (level 3).
    - The Commission monitors the Member States' compliance with EU requirements and, where necessary, initiates infringement proceedings against Member States (level 4).

- **Key tasks of CESR, CEBS and CEIOPS**
  – CESR, CEBS and CEIOPS are to help implement and apply EU law consistently, as well as to converge national supervisory practices across the EU. The Committees:
    - do not have any regulatory powers, but pursue these goals by "issuing non-binding guidelines, recommendations and standards" (Art. 3);
    - act as mediators where controversies between national supervisory authorities arise (Art. 4 (1) lit. a);
    - set guidelines for the supervision of cross-border active financial service providers by "colleges" consisting of several national authorities and monitor the coherence of their practices (Art. 4 (1) lit. e);
    - are to develop "new practical convergence tools to promote common supervisory approaches" (Art. 4 (3));

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  - cooperate closely to develop coherent cross-sector supervisory practices, e.g. by establishing training programmes, cross-border inspection teams and controls and facilitate an increase in personnel exchange (Art. 6 (1) and (2) in conjunction with Art. 9 (2)).
- Moreover, CESR, CEBS and CEIOPS are to increase financial stability. The Committees:
  - monitor and assess the developments in their respective sectors and inform the Commission, the national finance ministries and the national central banks about potential or imminent problems;
  - at least twice yearly, provide to the Commission assessments of the stability of the financial systems and detect potential risks and vulnerabilities in their respective sectors;
  - where necessary, propose to the Commission preventative or remedial action;
  - develop common, cross-sector supervisory practices, and together with the Banking Supervision Committee (BSC) of the European System of Central Banks cover cross-sector risks and vulnerabilities. (Art. 5)

► **Particularity: financial conglomerates**
- CESR and CEIOPS advise the Commission as regards the implementing measures for the supervision of "financial conglomerates"; these are companies without "distinct" boundaries between the banking and the insurance business (Art. 2 of the Decisions 2009/78/EC and 2009/79/EC).
- CESR and CEIOPS cooperate in the area of supervision of financial conglomerates in a joint Committee on Financial Conglomerates. Representatives of the Commission and the European Central Bank participate in the meetings of this Committee as observers. (Art. 11 of the Decisions 2009/78/EC and 2009/79/EC)

► **Organisational and procedural requirements to CESR, CEBS and CEIOPS**
- Before transmitting its opinion to the Commission, the Committees must consult market participants, consumers and end users "extensively and at an early stage". The results of such consultations are published, unless the respondents raise objections. (Art. 12)
- The Committees may adopt decisions with a qualified majority. Each Member State has the same number of votes as when taking decisions with a qualified majority in the Council (Art. 14, sub-para. 1).
- Member States which do not comply with the guidelines, recommendations or standards of a Committee must explain the reasons for this (Art. 14 sub-para. 2).
- Each Committee must draw up an annual working programme for the following year by November and inform the Council, the European Parliament and the Commission on the achievements of its activities. Furthermore, each Committee "regularly" reports to the Commission. (Art. 9 and 13)

► **Community programme for financial aid to CESR, CEBS und CEIOPS**
- The proposed Community programme provides for the support of Committees in the area of financial market supervision, accounting and auditing. To this effect, an amount of € 36.2 million is to be provided from the Community budget. The programme is to run from 1 January 2010 to 31 December 2013. (Art. 9 and Annex COM(2009) 14)
- The Commission intends to provide CESR, CEBS and CEIOPS with up to € 8 million from the Community programme as co-funding for concrete activities such as conferences, publications, research, training and advanced training programmes and IT projects relating to the exchange between national supervisory authorities (Art. 6 COM(2009) 14).
- The Commission does not finance any activities which are an integral part of the Committee's actual mandate (Art. 5 (3) COM(2009) 14).
- The exact amount of financing is decided by the Commission without any co-decision rights of the Parliament or the Council (Art. 5 (4) COM(2009) 14).
- The Commission may also grant financial aid to possible successors of CESR, CEBS and CEIOPS, if a Committee of national experts agrees and if the Council does not object. The same applies to other non-profit-making legal persons pursuing the aims of supervisory convergence in the field of financial services. (Art. 7 in conjunction with Art. 13 (2) COM(2009) 14)

Changes Compared to the Status Quo

► The existing mandate of CESR, CEBS and CEIOPS to strengthen the convergence of supervisory practices is substantiated. What is particularly new is that Committees arbitrate conflicts between national supervisory authorities, develop guidelines for the supervision of companies operating cross-border and that a new tool to strengthen convergence is to be developed.
► For the first time, the Committees' possible forms of action – i.e. guidelines, recommendations and standards – are explicitly mentioned.
► The stability of the financial markets was hitherto not part of the mandates of CESR, CEBS and CEIOPS.
► New is that the decisions of CESR, CEBS and CEIOPS can be adopted by a qualified majority and not by consensus. This conforms to the actual practice already followed since 2008.
► Also new is the obligation for a Member State to explain the non-compliance with decisions of CESR, CEBS or CEIOPS. However, this has already been practised since 2008.
► To date, CESR, CEBS and CEIOPS have covered their expenses with contributions from the national supervisory authorities. In the future, they will be granted Community funding.

Statement on Subsidiarity

The Commission restricts itself to a formulaic reproduction of the requirements under Art. 5 EC Treaty.

Political Context

The Decisions trace back to the Commission's Communication "Review of the Lamfalussy process – strengthening supervisory convergence" (COM(2007) 727) of November 2007. There, the necessity was stressed to establish a clear framework for the European financial supervisory committees, which was confirmed by the European Council calling for prompt improvement in the way the Committees work in March 2008. This was substantiated in May 2008 through the ECOFIN Council, which requested that the Commission mandate CESR, CEBS and CEIOPS with an improved cooperation in financial supervision and convergence of supervisory practices, as well as to strengthen their role in assessing potential risks for the stability of financial markets.
The "De Larosière Report", drawn up on behalf of the Commission at the end of February 2009, provides for a new definition of the tasks of CESR, CEBS and CEIOPS and demands that they be supported financially. It further demands that these Committees become independent European authorities by 2012.

Legislative Procedure (as regards COM(2009) 14)

23.01.09	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union and entry into force

Options for Influencing the Political Process (as regards COM(2009) 14)

Leading Directorate General:	DG Internal Market and Services
Committees of the European Parliament:	Economic and Financial Affairs (in charge), rapporteur: Karsten Friedrich Hoppenstedt (EPP-ED Group, D); Budget; Legal Affairs
Committees of the German Bundestag:	Finance (in charge); Affairs of the European Union; Legal Affairs
Decision mode in the Council:	Qualified majority (approval by a majority of Member States and at least 255 out of 345 votes; Germany: 29 votes)

Formalities

Legislative competence:	Art. 95 (for Proposal COM (2009) 14); Art. 22 Rules of Procedure of the Commission (for Decisions 2009/77/EC to 2009/79/EC)
Form of legislative competence:	Concurrent legislative competence [COM (2009) 14]
Legislative procedure:	Art. 251 TEC (Co-decision) [COM (2009) 14]

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

The banking crisis has made it clear that in view of the complex international ties of the financial markets, the supervisory architecture in the EU is no longer up to date. **The current supervisory structures in the EU** are still shaped in a strictly national manner. In each Member State one or more authorities are in charge of supervising banks, insurances and other financial market actors. This structure **cannot safeguard to a sufficient degree the stability of financial markets**, since supervisory authorities working on a purely national level may simply overlook existing risks.
For instance, the risk to which a company operating at EU level – throughout several countries – is exposed can be much higher than the simple sum of risks observed in single Member States.
The Decisions concerning the amending of tasks of CESR, CEBS and CEIOPS and their funding **reflect this understanding**. With the Decisions, the Commission completely exhausts its scope to reach a consistent European supervision of financial markets without using legislative means.
The Decisions will improve the quality of supervision. By setting guidelines for the activities of supervisory colleges, CESR, CEBS and CEIOPS could **in particular** avoid that national authorities focus only on inland risks when **monitoring financial service providers operating at cross-border level**. Also, the mediation role of CESR, CEBS and CEIOPS, the development of coherent supervisory practice for financial conglomerates and the introduction of decisions with a qualified majority help to make the "micro-prudential" supervision of single financial service providers more effective.
Extremely welcome is the fact that in the future CESR, CEBS and CEIOPS are to supervise the overall stability of financial markets. This "macro-prudential" supervision necessarily requires supranational structures in view of the complex international ties. As the European Central Bank plays an important role in supplying commercial banks with liquidity also in the case of a crisis, it is reasonable that the CESR, CEBS und CEIOPS are to cooperate with the ECB's Banking Supervision Committee. In view of the close ties between global financial

markets this cooperation must be complemented at global level – e.g. by a cooperation with the International Monetary Fund (IMF).

At the same time, the Commission creates a forum with these Decisions that would be recommendable for a group supervision of financial service providers. Such **a group supervision, in which the competent national supervisory authorities jointly supervise financial service providers operating at cross-border level, is urgently needed**. It improves the quality of supervision, since it facilitates target-oriented and prompt supervisory decisions based on an overall examination of the risk profile of an institutional group. However, not all Member States accept this concept, since it might entail a loss of power: in the extreme case decisions are taken by the competent authority of the Member State where the financial group has its headquarters.

With the strengthening of CEBS, CESR and CEIOPS **the Commission also keeps the option open to centralise the supervision of financial markets at European level**. On the one hand this might prevent risks from being overlooked, which is possible with split supervisory structures. On the other hand, however, this benefit does not compensate the following disadvantages. Firstly, there is a risk that growing inefficiencies resulting from centralisation and the increasing authority's size would blur a clear overview of markets. Secondly, it is completely unclear how a central EU supervision should be able to work in view of very different national requirements as regards administration and insolvency law. Thirdly, the decisions of such a EU supervision would still have to be backed by national systems, as deposit-guarantee schemes and possible rescue plans for financial institutions which are considered "system relevant" are financed by financial service providers and tax payers in the respective Member State. Supervisory decisions and responsibilities would thus fall apart.

Impact on Efficiency and Individual Freedom of Choice

A closer cooperation between national financial supervision authorities in CESR, CEBS and CEIOPS can strengthen the coherence of supervision in the Community. This would, particularly for companies operating cross-border, lower the costs related to the compliance with supervisory requirements.

Impact on Growth and Employment

Insignificant.

Impact on Europe as a Business Location

A closer cooperation between national financial supervision authorities in CESR, CEBS and CEIOPS can improve supervision and strengthen the stability of the European financial market, which is indispensable for the credit supply of the real economy. As a consequence, the attractiveness of the EU as an investment location tends to increase. However, due to the close ties between global financial markets, the stability of the European financial market also depends on supervisory standards in other parts of the world.

Legal Assessment

Legislative Competence

Unproblematic.

Subsidiarity

Unproblematic.

Proportionality

There are no concerns regarding the extension of the Committees' tasks. However, the Commission fails to explain why a partial funding of CEBS, CESR and CEIOPS is required. It refers to the necessity of adequate funding but fails to provide evidence that the existing funding through Member States does not suffice to enable the Committees to fulfil their tasks.

Compatibility with EU Law

Unproblematic

Compatibility with German Law

Unproblematic, even though the establishment of CEIOPS in the form of a German registered association seated in Frankfurt is unusual.

Alternative Policy Options

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Possible Future EU Action

The Commission hints at the fact that the financial crisis might lead to new supervisory bodies being set up at both European and global level. It refers explicitly to the fact that CEBS, CESR or CEIOPS might be replaced by new EU agencies.

Conclusion

Strengthening the cooperation of national supervisory authorities in CEBS, CESR and CEIOPS and extending the scope of the Committees' tasks as to include the supervision of financial market stability are to be welcomed. It would be reasonable to complement these Committees with the establishment of a group supervision.