

**EUROPEANISSUERS COMMENTS ON  
THE CONSULTATION ON THE COMMISSION COMMUNICATION OF 27 MAY 2009 ON  
EUROPEAN FINANCIAL SUPERVISION**

**Position  
15 July 2009**

***I – Introduction***

EuropeanIssuers welcomes the Commission Communication of 27 May 2009 on European Financial Supervision (hereinafter “the Communication”). We support the proposed enhanced European financial supervisory framework composed of two new pillars: the European Systemic Risk Council (hereinafter “ESRC”) and the European System of Financial Supervisors (hereinafter “ESFS”).

EuropeanIssuers is in favour of the rapid implementation of measures to restore confidence in the financial system, improve conditions of access to financing for all businesses and better prevent, identify and manage systemic risks.

We agree with the Commission that the differences in national transposition of Community law must be identified and removed so as to have a single rulebook for financial sector entities and listed companies, applied by all competent authorities throughout the EU

Given the international scale of the crisis and ongoing financial market integration in the EU and globally, it is essential to seek consistent solutions at EU and international level thereby ensuring a level playing field for issuers and an equivalent level of protection for investors and other stakeholders.

***II - Comments***

**A – The European Systemic Risk Council (ESRC)**

EuropeanIssuers supports the proposed reform of macro-prudential supervision. In particular, we share the view that the ESRC’s role and responsibility should be to monitor the stability of the EU financial system and to issue early warnings and recommendations for remedial action. We agree that these warnings/recommendations should be channelled through the ECOFIN Council and/or the new European Supervisory Authorities. In this light we support that the ESRC would not have legally binding powers. Nonetheless, the ESRC should carefully monitor and report whether the recipients of warnings and recommendations effectively comply with

the “act or explain” mechanism proposed in the Communication. Otherwise there is the risk that the objectives of the ESRC will not be achieved. This is another reason why this body should indeed be fully accountable to the Council and the European Parliament.

The Communication mentions that the ESRC is “*to have a mandate covering the whole financial sector without exceptions, including insurance*” without defining the notion of financial sector. We are of the opinion that it is essential to define the entities that would be covered by the notion “financial sector”.

## **B – The European System of Financial Supervisors (ESFS)**

EuropeanIssuers supports the creation of the ESFS. It appears realistic, at this stage, to rule out the idea of setting up EU regulatory bodies to replace national regulators/supervisors and instead to focus on transforming EU committees of national regulators/supervisors into supervisory authorities, tasked with supervising the consistent application by national regulators/supervisors of regulations laid down exclusively at EU level. In the long term, it could be assessed whether the ESFS should keep its sectoral structure or adopt the structure proposed by the de Larosière Report, Recommendation 24.

The authorities should be able to perform their role effectively, to avoid this dual level from being unwieldy and counter-productive for the proper functioning of the markets and the regulation. In order to meet their objectives, it is essential for the EU supervisory authorities to be given adequate regulatory and supervisory powers and resources and for them to have genuine decision-making capabilities in their spheres of competence.

We agree that the EU supervisory authorities should be able to take general technical decisions. However, we are of the opinion that it should only be possible for these authorities to take binding technical decisions applicable to individual companies if these companies are supervised by a college of national supervisors (i.e. only for large cross-border financial sector entities). In particular, this involves establishing qualified majority rules and legally binding powers of mediation over national supervisory authorities.

It is necessary for these authorities to be accountable to the EU Institutions and for a clear distinction to be made between the competences of the new authorities and those of the European Commission, particularly in terms of regulation, implementation at the EU level and technical arrangements with international organisations.

For EuropeanIssuers, it is essential to leave general responsibility for day-to-day supervision up to the national supervisors, without contemplating applying the system of colleges of national supervisors to actors other than large cross-border financial sector entities.

With regard to the supervision carried out by stock market regulators, we consider that the EU passport system which applies to issues of securities appropriately incorporates cross-border considerations, as the approval by the regulator of the home Member State enables issues in other EU Member States without additional controls by other regulators. Therefore, the fact that the supervision, authorisations and investigations relating to the prospectus, information and transparency lie within the remit of the national authorities in the target schema of the de

Larosière report<sup>1</sup> is, in our opinion, quite right. However it should be noted that the national authorities are not yet aligned in terms of the efficiency and the cost of their functioning as charged on to businesses. We believe that these disparities lead to the unequal treatment of companies notwithstanding all efforts of harmonisation. These disparities should be removed.

Additionally, the Authority which takes over from CESR (the European Securities Authority, hereinafter “ESA”) should have standing committees including, in particular, a substantial number of issuers’ representatives other than from the financial sector.

In this context and in EU spheres of competence, EuropeanIssuers favours maximum harmonisation and the gradual elimination of specifically national exceptions or regulations:

- Binding rules should be drafted exclusively at EU level, either by the EU institutions or by ESA, in the framework of a delegation and under the supervision of these institutions. ESA should involve market actors in the drafting of regulation which would be imposed on them, ensuring that this regulation is proportionate to its objective and is not excessive;
- We also believe that it is vital to avoid interpretations which are not proportionate to the objective, are excessively detailed or even, at times, inappropriate, as a result of having been drafted urgently, without any real dialogue (e.g. level 3 CESR’s recommendations concerning the prospectus). To this end, it is necessary for the ESA to involve market actors in drafting interpretations in the framework of standing committees;
- Exceptions should be referred to the European Commission and eliminated under its supervision. The only grounds for maintaining certain national exceptions should be the need to safeguard financial stability.

So as to manage the risk of regulatory competition, all supervised entities (including purely national entities) should be able to refer those situations to the European Commission where they feel that they have been discriminated against as compared with an entity supervised by another regulatory authority. This referral power should not be limited to financial institutions and/or cross-border entities<sup>2</sup>.

### **C – Cooperation between the ESFS and the ESRC**

EuropeanIssuers believes that cooperation and information sharing between the “micro” and “macro” levels is essential for the good functioning of the proposed system of financial supervision. We support the view that the ESRC should receive relevant micro-prudential data from the ESFS and have the possibility to launch ad-hoc surveys requiring input from national supervisors and market operators. In particular, EuropeanIssuers considers fundamental that the market operators are consulted about the functioning of the market.

We also support the proposal that the European Supervisory Authorities provide the ESRC with aggregated and relevant disaggregated data on all financial institutions and markets.

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<sup>1</sup> De Larosière report/“Annex V: The allocation of competences between national supervisors and the Authorities in the ESFS/Securities Supervision/Stage 2”

<sup>2</sup> As suggested in § 205) i) of the de Larosière report.

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