MEMO/09/404

Brussels, 23 September 2009

European System of Financial Supervisors (ESFS): Frequently Asked Questions

(see IP/09/1347 and MEMO/09/405)

Why are the new European Supervisory Authorities (ESAs) needed?

The report of the de Larosière group[1] identified serious shortcomings in the existing system of financial supervision in Europe. There is a single market, and financial institutions operate across borders, but supervision remains uneven and often uncoordinated. A stronger financial sector in the EU in the future needs to have convergence between Member States on technical rules, and a mechanism for ensuring agreement and co-ordination between national supervisors of the same cross-border institution or in colleges of supervisors. A rapid and effective mechanism to ensure consistent application of rules is also necessary, as is co-ordinated decision making in some areas in emergency situations. The current advisory financial services committees are not currently equipped to carry out these functions.

What is the current situation?

The current financial services committees at EU level have advisory powers and can issue non-binding guidelines and recommendations. National supervisors of cross-border groups must co-operate within colleges of supervisors, but if they cannot agree, there is no mechanism to resolve the issue. Many technical rules are determined at Member State level, and there is considerable variation between Member States. Even where rules are harmonised, application can be inconsistent. This fragmented supervision undermines the single market, imposes extra costs for financial institutions, and increases the likelihood of failure of financial institutions with potentially additional costs for taxpayers.

What will be the powers of the new authorities?

The new authorities build on the existing powers of the current financial services committees[2], with a number of additional technical powers, including the following:

- Developing draft proposals for technical standards – to help to ensure more consistent rules within the EU, working towards a common rulebook;
- Facilitating exchange of information and agreement between national supervisory authorities, and where necessary, settling any disagreements, including within colleges of supervisors – to ensure supervisors take a more coordinated approach;

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[1] Report of 25 February 2009 on financial supervision by a high-level group of experts chaired by J. de Larosière.

[2] The Committee of European Banking Supervisors (CEBS), Committee of European Insurance and Occupational Pensions Committee (CEIOPS) and the Committee of European Securities Regulators (CESR), widely known as the "Lamfalussy level 3 committees".

- Contributing to ensuring consistent application of Community rules – to ensure incorrect or inconsistent application is dealt with quickly and effectively;
- Exercising direct supervisory powers for credit rating agencies;
- Co-ordination and some decision-making in emergency situations.

How will the new authorities be able to contribute to the creation of a "common European rulebook" for financial services?

The new authorities will play an important role in working towards a common rulebook by developing technical standards where necessary, in the areas defined in legislation, and by drawing up interpretative guidelines to assist national authorities in taking individual decisions. The technical standards can only become binding law after formal endorsement by the Commission.

How will the new authorities be able to arbitrate between national supervisors which cannot agree, and on what subjects?

By ensuring a more complete exchange of information and views at an earlier stage, the new authorities will considerably reduce the likelihood of disagreement. Nevertheless, being in a position to resolve any remaining disagreements is a key role of the authorities, to ensure consistent decision making in the EU, and certainty for firms. In the vast majority of cases, this would take the form of the authority assisting the national supervisors in coming to an agreement. But where they cannot agree on a matter. In case of a persisting disagreement, the European Supervisory Authorities should, through a decision, be able to settle the matter, taking into account the views of all supervisors involved.

Why can the new authorities address decisions directly to financial institutions?

In certain defined situations the authorities will be able to take decisions directly applicable to financial institutions but only at the end of a long procedure for the consistent application of Community law, in order to ensure the effectiveness of that procedure, and only in cases where there is directly-applicable EU legislation.

Will the ESFS interfere with the system of colleges of supervisors?

No. Colleges of supervisors and the new authorities are complementary parts of a comprehensive supervisory reform. Colleges of supervisors will remain at the heart of supervision of cross-border financial groups in Europe, and are being introduced for all such groups. The authorities will complement colleges by ensuring that supervisory standards in the EU are of the highest quality for all institutions by, for example, helping to develop a common rulebook for financial services regulation. They will further facilitate colleges by playing a role in distribution of information, and can participate in colleges themselves. They will also provide a mechanism for ensuring that supervisory colleges are consistent for each cross- border group.

Why is it proposed that some specific institutions with Community-wide reach be supervised at the EU level?

First of all, domestic financial institutions in Europe will continue to be supervised by national supervisors. Cross-border institutions will be supervised by colleges of supervisors. Entities with a Community-wide reach by their very nature are most efficiently supervised at European level since national supervisors would only have a partial view of their activity. In the near future this would only be appropriate for credit rating agencies. The Regulations creating the authorities do not grant them any direct supervisory powers over any institutions, they merely open up the possibility for subsequent legislation to grant supervisory powers for any particular category of institution.

What powers will the authorities have in emergency situations?

In an emergency situation, the existence of which will be determined by the Commission, the authorities will have an important co-ordinating role between national supervisors, and will also be able to adopt decisions requiring supervisors to take action. An example of how this power might be used would be to adopt harmonised bans on short selling on EU securities markets, not unco-ordinated bans in different Member States, as happened in 2008.

What will the new authorities cost and how will they be financed?

The total costs of the European Supervisory Authorities have been estimated at about € 37 million in the first full year of operations (2011), reaching just over € 68 million after three years (2014), given increases in activity and staff levels. This is a very small budget compared with the more than a billion euros incurred by Member State governments in rescuing banks in difficulty, so if the new authorities can prevent even a small part of that outlay in future, they will have paid their way. It is proposed that the share of this cost for Member States and the Community budget should respectively be 60% and 40%. The shared funding is intended to reflect the architecture of the ESFS which brings together a European dimension with a key ongoing role for national supervisors. It also reflects the fact that the current "financial services committees" are funded entirely by the Member States.

How will the independence and accountability of the authorities be ensured?

Firstly, the voting members of the boards of the authorities are under a legal obligation to consider only EU interests, not national or any other interests, in their decision-making. The authorities will be accountable to the Council (representing the Member States) and the Parliament (representing the Community), not to the Commission. The Chairpersons of the Boards will be selected on merit after an open selection procedure and subject to conformation by the European Parliament. The EU's Court of Auditors and Anti-Fraud Office will have full competence to inspect the books of the authorities.

How will the new authorities respect the better regulation agenda?

Better regulation principles are fundamental. Before submitting draft technical standards to the Commission, the authority will use better regulation tools including open public consultations on technical standards and analysis of potential related costs and benefits. Moreover, a balanced stakeholder group for each authority will enable stakeholders to be consulted on all regulatory matters such as technical standards or guidelines developed by the authorities. These stakeholders will include financial institutions, their employees, investors, and end users including SMEs. In addition, the current public consultation practices developed by the financial services committees should continue to be followed.

Is this a Europeanisation of financial supervision in Europe?

No. Day-to-day supervision is best done on national level, close to the ground, where there are strong local traditions. There will always be a pivotal role for national supervisors. The proposed system is a "hub and spoke" type of network of EU and national bodies. The new authorities will act only where there is clear added value, such as the development of technical standards which will apply throughout the EU, and settlement of disagreements between national supervisors on matters which require co-operation. The areas where the authorities can act will be strictly defined by Council and Parliament in co-decision. The Commission's approach is based on common rules applied at national level but consistence and co-operation ensured by Community bodies. The European System of Financial Supervisors will be evaluated after three years. While it is not possible to pre-judge the outcome of the evaluation, this will be the opportunity to take stock of how well the ESFS is working and to look at whether further steps are needed.

What safeguards are in place to protect the fiscal prerogatives of Member States and national taxpayers' money?

The purpose of the new European supervisory system is precisely to prevent us getting to the point reached in autumn 2008 where banks had to be bailed out. The system will save taxpayers' money by helping to make bank failures less likely in future, through supervision strengthened by the ESAs, and warnings of the European Systemic Risk Board which should be acted upon. As an additional safeguard, the Regulations establishing the new Authorities clearly prohibit them from taking any decisions which impinge on the fiscal responsibilities of Member States. In case any Member State considers that its fiscal responsibilities have been impinged upon, there is a clear and robust procedure for deciding whether this is genuinely the case, with the Council taking a decision.

Will the new authorities be dominated by the big Member States?

No, there will be a balance of influence. The boards of the authorities will vote by qualified majority voting on key issues developing technical standards and guidelines, as well as budgetary matters. But one-member-one-vote will apply to enforcement and implementation matters. This differentiated voting system ensures a balance of interests between Member States; and between home and host state supervisors' interests.

Will there be different rules or enforcement standards for small domestic institutions and for multinationals?

No. The whole point of the new system is to achieve convergence of rules not divergence. The goal is one set of rules for all financial institutions in the EU, big or small, domestic or multinational. The new authorities will contribute to common rules and common application of rules, and not develop different rules for multinationals. This was the spirit of the de Larosière proposals which the Commission fully supports.

Will financial institutions be subject to additional reporting burdens?

The new structure should not lead to a duplication of reporting burdens. National supervisory authorities generally have the necessary information available, and the European Systemic Risk Board and the European Supervisory Authorities should rely on these data. Only where in a specific situation the data available from national supervisors is clearly insufficient for the European Supervisory Authorities to carry out their tasks, it can be envisaged that they could request information directly from financial institutions.