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AFG RESPONSE TO THE EUROPEAN COMMISSION CONSULTATION PAPER ON AMENDMENTS TO COMMISSION DECISIONS ESTABLISHING CESR, CEBS & CEIOPS

Dear Mr. Wright,

The Association Française de la Gestion financière (AFG)¹ welcomes the Commission's consultation paper on amendments to Commission Decisions establishing CESR, CEBS & CEIOPS.

¹ The Association Française de la Gestion financière (AFG)¹ is registered as a representative collective organisation on European institutions' register, under number 5975679180-97. AFG represents the France-based investment management industry, both for collective and discretionary individual portfolio managements.

Our members include 405 management companies. They are entrepreneurial or belong to French or foreign banking or insurance groups.

AFG members are managing more than 2500 billion euros in the field of investment management, making in particular the French industry *the leader in Europe in terms of financial management location* for collective investments (with nearly 1500 billion euros managed, i.e. 22% of all EU investment funds assets under management), wherever the funds are domiciled in the EU, *and second at worldwide level after the US*. In the field of collective investment, our industry includes – beside UCITS – the employee savings schemes and products such as regulated hedge funds/funds of hedge funds as well as a significant part of private equity funds. AFG is of course an active member of the European Fund and Asset Management Association (EFAMA) and of the European Federation for Retirement Provision (EFRP). AFG is also an active member of the International Investment Funds Association (IIFA).

AFG fully shares Commission's wishes to better align, clarify and strengthen the work of the 3 Committees to ensure a smooth and well functioning Single Market. A greater consistency between the three Decisions and a clearer framework for the activities of the Committees in the area of supervisory cooperation and convergence will be particularly helpful.

1. In the context of amending Commission Decisions' provisions, one of the most important tools to stress would be to give adequate financial - and staff - means to Level 3 Committees. **AFG is afraid that reinforcing the role of Level 3 Committees without reinforcing their means would not lead to very significant improvements.** Maybe this point could be more emphasised in Commission Decisions as well as in the relevant Level 1 and Level 2 texts.

2. In the same vein, Commission Decisions (and the Level 1 and Level 2 texts, where appropriate) should emphasise that **as soon as national regulators become part of Level 3 Committees, they must commit to actively contribute and devote time in Level 3 Committees' works.** In practice, only a few cases show that all Level 3 Committees' members are active on topics: very often, only a couple of national regulators are regularly active on all topics – despite the fact that by definition all topics have a Single Market dimension, and therefore relate to all national regulators in principle.

3. We wish to stress that a growing number of files is cross-sectorial. For instance, retirement schemes are currently tackled by CEIOPS. However, the defined-contribution structures – which are developing faster than the defined-benefit ones - are closer to the schemes dealt by CESR (i.e. investment funds). From this cross-sectorial perspective, we think that the action from the European Commission is going towards the right direction, **although the investment management industry is still not represented in the CEIOPS Consultative Panel in spite of our regular requests on this issue.**

4. More widely, we think that **Commission Decisions should reinforce the role that market participants could play in the governance of Level 3 Committees, in particular for making convergence work.** Beyond bringing additional practical input in Level 3 debates, such mandatory involvement of market participants would facilitate both identifying the practical difficulties arising from the lack of convergence between Level 3 members and finding solutions to overcome such difficulties.

5. However, we agree with the Commission that having a growing number of cross-sectorial files does not mean that it requires harmonising the three Decisions as such: sector-specific issues may require some differences between these Decisions.

6. As mentioned by the Commission, the proper implementation of Community legislation in Member States implies a consistent interpretation and application of the rules on the ground. From this perspective, **we regret that the Commission paper does not recall a crucial element of the Lamfalussy report: the need for making use of Regulations rather than Directives - as far as possible.** We fully support this position from the Lamfalussy report, in the context of giving more efficiency to Level 3 Committees: the convergence of national regulators' practices – based on Level 3 guidance or standards - would be greatly helped if Level 1 and Level 2 measures were Regulations (and less often Directives). Getting European regulations instead of directives would avoid any national legislative transposition creating potential *divergent national legislations - on which Level 3 members (i.e. national regulators) have no power, as national legislations are not adopted by them but by national legislators.*

7. Beyond this lack of reference to the crucial debate “Regulations vs. Directives” for improving the efficiency of Level 3, there is a more general lack of references in the Commission paper to Level 1 and Level 2 frameworks – although such frameworks are the most important elements for the proper functioning of Level 3 Committees.

8. For the longer term, beyond working on reinforcing the role and powers of the three Level 3 Committees, we believe that it will be necessary to create single European regulators in each sector ((i) securities including asset management, (ii) banks and (iii) insurance). As long as national regulators remain, the risk of discrepancies in national implementations of Level 3 measures – leading to “regulatory national goldplating” or, symmetrically, “regulatory dumping” – will remain. From an international perspective, getting Single European sectorial regulators would also ease the dialogue with other regional regulators.

You will find below AFG’s detailed answers to the questions:

Question:

- (i) Do you agree that voluntary and/or obligatory mediation can be a useful tool to enhance the effectiveness of supervision?*
- (ii) Do you agree that this task should be conferred to the Committees of Supervisors in the Decisions establishing them?*

- (i) We agree that a mediation mechanism would be a useful tool but it will not be enough to ensure the effectiveness of supervision, even if we wish that mediation becomes mandatory **and binding in its effects** to become more efficient. **The current non-binding effect of mediation clearly limits the efficiency of such a mechanism today.** For the longer term, as the ultimate solution, a unified and single supervisor for each area (banking, asset management/securities and insurance) should be put in place at European level.
- (ii) Yes, the mediation mechanism – as a mandatory and binding one - should be spelled out in the Decisions establishing the Committees of Supervisors.

Question:

- (iii) Do you agree that the Committees of Supervisors should have an explicit consultative role with respect to certain decisions to be taken by supervisory authorities?*

- (iii) To ensure a level playing among the powers of the 3L3 Committees, CESR and CEBS should, similarly to CEIOPS in the context of the Solvency 2 proposal, be granted with an obligatory consultative role on the equivalent value of a third party regime and on the approval of an internal model. But as for Solvency 2, it should be decided on a case-by-case basis through the provisions of Level 1 texts (rather than in Commission Decisions).

Question

(iv) Do you agree with the proposed role of the three Committees of Supervisors with regard to information exchange?

- (iv) Yes. More standardised reporting requirements and establishing mechanisms in the Commission Decisions to ensure effective information exchange between supervisory authorities would be more than welcomed to facilitate the work of the Committees of Supervisors and would ultimately benefit the relevant industries and investors.

Question

(v) Do you agree that the Committees of Supervisors should as a priority have a role to foster delegation of tasks between national supervisors?

(vi) Do you consider that delegation of responsibilities should also be regarded as a priority? If so, what could be the role of the Committees of Supervisors in this respect?

- (v) Regarding the delegation of *tasks* between national supervisors, we think that introducing its general principle within Commission Decisions might bring some useful flexibility in the functioning of regulators' tasks – as long as such delegations are explicitly mentioned in Level 1 and Level 2 measures, as it should be for European institutions to decide on such delegations on a case-by-case basis
- (vi) Regarding the delegation of responsibilities, the topic becomes even more sensitive, as it implies a legal dimension. Even more importantly than for delegation of tasks, the faculty of delegating responsibilities should be strictly framed within Level 1 and Level 2 measures.

Question

(vii) Do you agree with the proposed role of the three Committees of Supervisors with regard to streamlining of reporting requirements?

- (vii) Yes.

Question

(viii) Do you agree with the proposed role of the three Committees of Supervisors with regard to colleges or similar arrangements?

- (viii) We support the principle of colleges of Supervisors. However, beyond the principle, it will depend on the details of functioning of such colleges. In particular, how the role

of the college would match/fit with the responsibilities given to the home/host regulators. Would the college give instructions to the home/host regulators to define how they should perform their rights and responsibilities?

In the medium-term, it would be even more efficient to set up a single Supervisor by area. Then the question of convergence of supervisors' practices would be solved.

Question

(ix) Do you agree with the proposed role of the three Committees of Supervisors to develop a common European culture? If yes, what are the most important tools to meet this objective?

- (ix) Yes. A common understanding of the rules and comparable working procedures of the supervisors is necessary. We support the joint training efforts as well as the idea raised by the European Commission, following which supervisors should increase their efforts to facilitate personnel exchanges and shared training among supervisory authorities. For us, all these tools are equally important, and must be set up in parallel as they are complementary the ones from the others.

Questions

(x) Do you agree with the need to provide a general framework for joint 3L3 work in the Commission Decisions establishing the Committees of Supervisors?

(xi) Should the obligation and responsibility for 3L3 cooperation and coordination be spelled out in a more detailed way? If so, what are the specific obligations and responsibilities the Committees of Supervisors should be assigned in this respect?

(xii) Do you agree with the approach suggested for the supervision of financial conglomerates?

- (x) Yes. The general legal framework for joint 3L3 work should be detailed in the Commission Decisions establishing the Committees of Supervisors.

- (xi) No. Only general principles regarding obligations and responsibilities for 3L3 Committees' cooperation and coordination need to be spelled out in the Decisions establishing the Committees.

Question

(xiii) Do you consider that the Committees of Supervisors should be requested in the Decisions to take decisions by qualified majority, with a "comply and explain" procedure?

(xiii). Yes. We agree that taking decisions by qualified majority – with a comply or explain complement - is a necessary step to grant the Committees of Supervisors more efficiency. It should be explicitly introduced in Commission Decisions.

Question

(xiv) Do you consider that the request to the Committees of Supervisors to submit their annual work-programmes to the ECOFIN Council, the European Parliament and the Commission should be included in the Decisions?

(xiv) Yes. But it crucial that such work-programmes are submitted to stakeholders (in particular market participants) as well.

Question

(xv) Do you agree with the proposed role of the three Committees of Supervisors?

(xvi) Are additional efforts needed to strengthening risk analysis and responsiveness at the EU level? If so, please specify these efforts.

(xv) Yes. However, regarding confidentiality, we consider that as soon as the underlying policy decisions might impact market participants, such market participants must be consulted (even on a confidential basis - if there is a high risk of organising a public consultation in the relevant case) because of the danger of unintended consequences. As a principle, the absence of public consultations should be strictly limited and comprehensively justified; and at least confidential consultations should take place with the relevant stakeholders.

We thank the Commission very much for taking into consideration our comments and remain at your disposal for any further questions. Please feel free to contact myself at 00 33 1 44 94 94 14 (e-mail: p.bollon@afg.asso.fr), our Head of International Affairs Stéphane Janin at 00 33 1 44 94 94 04 (e-mail: s.janin@afg.asso.fr) or his deputy Catherine Jasserand at 00 33 1 44 94 96 58 (e-mail: c.jasserand@afg.asso.fr).

Yours sincerely,

(signed)
Pierre Bollon

