



Brussels, 24 AVR. 2009  
D(2009) 3333

## Opinion

**Title**                      **Commission Communication on European Financial Supervision**  
**(draft version of 15 April 2009)**

**Lead DG**                      **DG MARKT**

### **1) Impact Assessment Board Opinion**

#### **(A) Context**

Following up on the Communication on Driving European Recovery [COM (2009)114] and the March 2009 European Council conclusions, the Commission is preparing a Communication on European financial supervision for discussion at the June European Council. Being part of a broader package of the financial market reform proposals, the Communication focuses on the changes in the EU institutional framework for macro and micro prudential supervision recommended in the "de Larosière report" by the High Level Group on financial supervision in the EU created by President Barroso in October 2008. Detailed legislative proposals to implement the proposed institutional reforms are expected for later in the year and will be accompanied by further impact assessments. This work takes place against the background of G-20 efforts to strengthen the supervision of macro-prudential risks and cross-border financial institutions at the international level.

#### **(B) Positive aspects**

The report is well written and drafted in a language accessible to the non-expert reader.

#### **(C) Main recommendations for improvements**

*The recommendations below are listed in order of descending importance. Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.*

**General recommendation: The Board acknowledges that the preparation of the report has been affected by the tight schedule for adoption of the related Communication as part of the Commission's response to the financial crisis and underlines the importance of subjecting future detailed legislative proposals to fully-fledged impact assessments. Against this background, the report should be improved in various areas. It should delimit more clearly the scope of the initiative,**

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**strengthening the analysis of the problems, indicating the extent to which it addresses issues of crisis management and burden sharing and putting proposals in the context of the on-going international reflections. The report should also better define the options considered and strengthen the analysis of their impacts, especially in the case of the European System of Financial Supervision and the single EU supervisor in the micro-prudential area. The aim should be to show more clearly how the preferred options would address the various problem drivers and ensure a more effective supervision, particularly in the case of cross-border institutions.**

**During the IAB meeting DG MARKT stated its intention to take on board these recommendations.**

**(1) Delimit more clearly the scope of the initiative.** The report should strengthen the analysis of problems and use illustrative examples to link the general issues identified to the practical experience of the recent financial crisis (for instance, with respect to the fragmentation of supervision – p.5, the "nationalistic" character of responses to the crisis – p.2 and 6, and the difficulties in sharing sensitive information). The limitations for EU-level supervision due to the absence of EU-level fiscal powers should be openly flagged. Against this background, the report should clearly indicate the extent to which the proposed initiative addresses issues related not only to crisis prevention, but also to crisis management and (ex ante or ex post) burden-sharing, and the implications of this for the role of finance ministers. Finally, the relationship and consistency between the proposed initiative and the parallel work led by the G-20 at the international level should be more clearly highlighted.

**(2) Better define the options analysed.** The report should better define the content and, where appropriate, the legal basis of the options analysed. In the case of micro-prudential supervision, the nature of the network arrangement at the heart of the ESFS (p.17) should be more clearly spelled out. In so doing, the report should give more precise indications on the envisaged division of responsibilities on the one hand between national supervisors and the new EU authorities (e.g. as regards issues such as standards, guidelines or individually legally binding decisions), and between the latter and the European Commission on the other hand. A hub-and-spokes system akin to that of the ESCB - whereby national supervisors act as elements of a common EU structure when performing certain specific tasks - should also be considered as one of the options. With regard to macro-prudential supervision, the report should identify, and discuss the pros and cons of alternative choices for some key elements of the functioning of a European Systemic Risk Council, separate from but under the auspices of the ECB. This would, for instance, be the case for the addressees of, and follow up to, ESRC warnings, the composition of the ESRC board and its decision making rules.

**(3) Strengthen the analysis of the impacts of the preferred options.** The report should analyse in greater depth the impacts of the two chosen options for micro and macro prudential supervision, particularly with regard to stakeholders, the extent to which they address the problem drivers such as the lack of exchange of information (p.9 and 13), differences in supervisory rules and practices (p.9) and the national nature of the mandate and accountability of supervisory and fiscal authorities (p. 10 and 27), and more general issues of transparency and the candid assessment of risks. To the extent possible at this stage, the report should also provide a deeper analysis of costs. In particular the argument that a single EU supervisor would be more costly than the ESFS should be better substantiated or its weight in the comparison of the two options changed accordingly. .

Building upon this analysis, the report should show more clearly how the proposed institutional set up would ensure a better management of the sort of the factors that led to the current crisis.

**(4) Highlight the specific case of cross-border banks and financial conglomerates.**

The report should more clearly spell out how the preferred options would address the supervisory challenges posed by cross-border institutions at the EU and at the international level. In this context, the role that EU and international colleges of supervisors would play in the reformed institutional framework should be clarified.

**(D) Procedure and presentation**

Given the urgency of the initiative, the report was submitted to the Board only a week before examination. However, an Inter-Service Steering Group was created and stakeholders were consulted (by the High Level Working Group while drafting the de Larosière report and by the Commission on the de Larosière report itself). A summary of responses to the latter consultation should be annexed to the report. All tables should be numbered. Greater care should be taken to present the baseline scenario (§ 3.6) and the policy options (§5) in a neutral tone without prejudging the analysis of the options. Similarly, section §3.7 should avoid repeating the analysis of the problems and specifically argue the need for EU action (right to act and EU value-added). The operational objectives listed on p.36/37 should either be presented in § 4 or incorporated in the (improved) definition of the options as per above. Finally, for enhanced transparency, it would be useful to identify (in an annex or box) any differences with the de Larosière report proposals, including the decision to accelerate progress with the ESFS rather than following a two stage approach.

## 2) IAB scrutiny process

Reference number	2009/MARKT/046
Author DG	MARKT
External expertise used	No
Date of Board Meeting	22 April 2009
Date of adoption of Opinion	24 AVR. 2009