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Opinion

Title Impact Assessment accompanying the Legislative package creating the European system of Financial Supervisors (ESFS) and the European Systemic risk Council (ESRC) (draft version of 20 August 2009)

Lead DG DGs MARKT, ECFIN

1) Impact Assessment Board Opinion

(A) Context

Following the Communication on Driving European Recovery [COM (2009)114] and the March 2009 European Council conclusions, the Commission issued a Communication on European financial supervision on 27 May that was discussed at the June European Council. The Communication focused on changes in the EU institutional framework for macro and micro prudential supervision building on the recommendations of the High Level Group on financial supervision in the EU set up by President Barroso in October 2008 ("de Larosière report"). It proposed the creation of two new bodies: a European Systemic Risk Council (ESRC), and a European System of Financial Supervisors (ESFS) consisting of a network of national financial supervisors working in tandem with new European Supervisory Authorities (ESAs), created by the transformation of existing Committees for the banking, securities and insurance and occupational pensions sectors. This impact assessment accompanies the legislative proposals which will implement the proposed institutional reforms. 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 provides a detailed overview of the areas in which the proposed agencies will be active.

(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 follow-up measures to

the Communication of 27 May as part of the response to the financial crisis. Further work is needed to clarify the specific objectives of these proposals, in particular concerning (i) independence of the ESAs, the ESFS, the ESRB and members of their governing bodies; (ii) the interaction between macro and micro supervision and how this will be ensured by the ESRB and the ESFS, and (iii) the creation of a Single European Rule Book. The report should also provide clear criteria for comparing how the options achieve these clarified objectives. The report should provide greater clarity on the interaction between measures proposed by the agencies and the issue of fiscal responsibility. It should also explain what measures will be put in place to assess the impacts in terms of compliance and administrative costs of measures taken by the ESRB and the ESAs. The arrangements for financing the agencies should also be better explained.

During the IAB meeting DG MARKT and DG ECFIN stated their intention to take on board these recommendations. While the IAB acknowledges that it will not be possible to produce a revised report for the inter-service consultation, it asks the DGs to ensure that it will be available for the rest of the Commission's decision-making process.

(1) Clarify the specific objectives to be pursued and, on the basis of these objectives, provide clear criteria for the comparison of the options. The report should provide greater clarity on the specific objectives to be pursued through the creation of the new agencies and the system as a whole, including on the following points:

(i) Independence: the report should clarify that independence of the ESAs, the ESFS, the ESRB and members of their governing bodies is a specific objective of these proposals. It should also explain more fully why this independence is important and how it relates to the role of these bodies in supervision and in standard setting. In this context the report should address the fact that central bankers may be both voting members in the ESRB and potential addressees of its warnings;

(ii) Micro and macro supervision: the report should explain the need for interaction between micro and macro supervision on the basis of a number of stylised examples, and provide a more comprehensive explanation of how this interaction will be ensured by the ESFS and ESRB, including for example the issue of cross-representation between these bodies;

(iii) Single European Rulebook: The report should clarify the notion of the 'single rulebook', and explain the mechanism for creating it.

On the basis of the re-formulated objectives, the report should provide clear criteria for the comparison of the efficiency, effectiveness and consistency of the options presented which can also be used for evaluation purposes.

(2) Address the issue of fiscal responsibility. In order to illustrate the need for corresponding safeguards, the report should explicitly address how in substance the supervisory powers exercised by the ESAs could impact on Member States' fiscal responsibility, and illustrate this with practical examples.

(3) Explain how the impacts of measures taken by the agencies will be assessed, and clarify the way in which the agencies will be financed. The report should explain in greater detail at which stage and how the impacts (particularly on financial institutions) of the introduction of future binding standards and information obligations will be

assessed. If such future impact assessments are to be produced by the ESAs themselves, this should be clearly stated in the report.

(4) Clarify the arrangements for financing of the new agencies. The report should explain how the costs will be shared between national supervisors and the EU budget, and fulfil the requirements of the Financial Regulation on ex ante evaluation. It should explain why it is not possible to provide a cost estimate for the ESRB.

(D) Procedure and presentation

The report has been prepared with the support of an Inter-service Steering Group consisting of the two author DGs MARKT and ECFIN, as well as the Legal Service and the SG. The Steering Group met on 25 June and 14 July 2009. When the report was discussed by the IAB, discussions on the content of the proposals were already underway. DG MARKT should ensure that the content of the proposals is fully covered by the analysis of the final version of the report. Annex 2 should be updated to better reflect the greater specificity of this impact assessment.

2) IAB scrutiny process

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