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Internal Market and Services DG

Director-General

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Ms Kerstin af Jochnick
Chairwoman
Committee of European Banking
Supervisors
Floor 18, Tower 42
25 Old Broad Street
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Dear Kerstin,

The ECOFIN Council on 4th December 2008, when reviewing the functioning of the Lamfalussy process, invited the Commission to study the differences in supervisory powers and objectives between national supervisors and to conduct a cross-sectoral stock taking exercise of the coherence, equivalence and actual use of sanctioning powers among Member States and the variance of sanctioning regimes. As indicated in the Roadmap endorsed by the Council these actions are expected to be completed by the end of 2008.

This work is of high importance. In the absence of equivalent supervisory and sanctioning powers, there is a risk that EU law will not be applied in a consistent way. Furthermore, the capacity to act on an equal footing for the performance of supervisory and sanctioning powers is necessary for the national supervisory authorities to fulfil their tasks in terms of EU supervisory cooperation and convergence. I cannot stress enough the importance these issues have been given in the context of the current financial turmoil.

The Council has asked the Level 3 Committees to cooperate with and assist the Commission in accomplishing these tasks. Taking into account the substantial workload of CEBS already resulting from the October ECOFIN Roadmap on the credit crisis, the Commission would like to ensure that there is a smooth and effective cooperation in delivering these studies which minimises, as much as possible, the amount of additional work required.

My services have already started to work on these matters, as part of the transposition check of Article 136 of the CRD and the public consultation on the review of the Winding-Up Directive. We are ready to provide you with the information at our disposal. However, given the fact that the differences in supervisory and sanctioning powers stemming from the banking directives have not yet been formally studied in detail, a

mapping exercise carried-out by the members of CEBS appears to be a prerequisite for the Commission's subsequent work to fulfil the Council's request.

To this end, I would be very grateful if CEBS could provide my services with an overview of the existing powers of supervisory authorities in all EU Member States as well as with an analysis of the differences in the respective supervisory powers (both in terms of the legal attribution of powers as well as their actual use). There are three questions which need to be answered:

- I. What are the powers that each national supervisor has under the national law transposing the EU banking directives and in particular those implementing Article 136 of the CRD?
- II. What are the main differences that can be observed between the powers entrusted to supervisors?
- III. Taking into account that the EU banking legislation contains only a list of adequate minimum powers and sanctions (i.e. in Article 136 of the CRD), what other supervisory and sanctioning powers do supervisors have at their disposal under national laws?

The Commission suggests that CEBS explicitly examines the differences in supervisory powers in relation to:

- I. "Core" prudential supervisory activities in relation to:
 - Taking-up of business / licensing of credit institutions;
 - On-going activity / compliance with prudential rules and powers towards third parties;
 - Credit institutions in difficulties and crisis management (reorganization and insolvency proceedings and other supervisory tools in crisis situations referred to in the ECOFIN crisis management roadmap);
- II. rule-making;
- III. administrative measures and sanctioning powers against the undertaking and/or the administrative and management body (including amounts of fines linked to a type of financial institution and the type of breach committed)
- IV. other remits that might fall under the scope of banking supervisors in relation to the domestic rules such as anti-money laundering and fight against terrorist financing; consumer protection etc.

With regard to the objectives of the national supervisory authorities I would suggest that CEBS builds on the results of the enquiry of national mandates prepared for the Financial Services Committee. The purpose would be to create a comprehensive list of the

objectives given to all EU supervisory authorities under national laws which would then allow for the comparative analysis.

The Commission welcomes the Level 3 committees' commitment to continue the work, on the identification of possible obstacles stemming from differences in supervisory and sanctioning powers as well as objectives (cf. letter of the Level 3 Committees' Chairs to Commissioner McCreevy of 27 February 2008). Keeping in mind the deadlines endorsed by the ECOFIN Council, it would be desirable to accelerate this work as much as possible. To this end, the Commission would welcome CEBS sharing its preliminary findings on supervisory powers and objectives in July 2008. We would highly appreciate receiving the analysis of the findings on supervisory powers and objectives and a comparison at 3L3 level of the sanctioning powers until the end of October 2008.

I am sure that CEBS will share in our determination to swiftly implement the Council Conclusions on the Lamfalussy review. Building on our positive experiences of mutual cooperation to date I would appreciate it if you could keep my services regularly informed of your progress.

We remain of course at your disposal for any queries that you may have (Karolina Ostrzyniewska (Ph. +32 2 296 80 36) and Arvind Wadhera (Ph. +32 2 2986 344) are at your disposal to that effect).

Yours sincerely,



Jörgen HOLMQUIST

C.c.: Mr Eddy Wymeersch, Chairman, Committee of European Securities Regulators, Mr Thomas Steffen, Chairman, Committee of European Insurers and Occupational Pensions Supervisors