

European Commission  
DG Internal Market  
Unit G1 – Consultation on Financial Supervision

7 April 2009

**Response submission from ICMA:**

**Re: European Commission Consultation on the “Improvement of Supervision for the Financial Services Sector”**

*Introduction:*

This response addresses the consultation of interested parties launched by the Commission on 10 March, in respect of financial market supervision. We thank you for the opportunity to express our views. ICMA is a pan-European association of over 40 years standing and with around 350 buy-side and sell-side members. Our main role is to set industry standards to help create and maintain orderly capital markets. As a self-regulatory organisation in Europe, we are keen to work with the regulatory authorities. The views expressed in this response are the carefully reflected outcome of discussions with our members but, given the diversity of our membership, should not be read as having specific endorsement from any individual ICMA member firm.

We welcome the very important contributions to the current debate on improving the supervision of the financial services sector that are provided by publication both of the report of the high-level group on financial supervision in the EU chaired by Jacques de Larosière (“the Report”), on 25 February 2009, and of the Commission’s Communication of 4 March 2009 “Driving European Recovery” (“the Communication”). We understand that the Commission intends to come forward by the end of May 2009 with a subsequent Communication setting out its proposals on the future of the EU supervisory architecture, followed by specific legislative measures in autumn 2009. Our views expressed herein are made in this context and aim to contribute constructively to the Commission’s continuing efforts to develop the best possible reform proposals. In commenting we focus on important questions concerning financial stability, financial supervision and EU regulation, actions on which are primarily designed to repair the financial system so as to prevent another crisis in future. We note though that the most immediate issue remains how to restore confidence in the financial system and the wider economy so as to recover from the present crisis, which topic the Communication also serves to address and in which regard urgent steps should indeed continue to be taken.

*Global Dimension:*

In considering what both the Report and the Communication have to say about changes that need to be made in the arrangements for regulating securities markets, supervising financial institutions and overseeing financial stability in Europe we are particularly mindful of the goal of restoring orderly capital markets. As capital markets are global, the European approach and the global approach clearly need to

converge so that they are part of a coherent whole. The focus of the Report is on the EU, whilst many international financial firms that are heavily involved in cross-border business between the EU and the rest of the world have their headquarters outside the EU (e.g. in Switzerland and the US). Accordingly we believe it is very important that development of further details adequately takes this dimension into account. We support a truly global approach with the G20 in the lead, bolstered by active European engagement to ensure this proceeds to a satisfactory and timely conclusion. We welcome the Commission's initiative to advance proposals to improve financial supervisory arrangements within the EU, mindful of this overall coherence constraint.

*Macro-prudential Supervision:*

Turning to specific proposals of the Report we firstly consider the European Systemic Risk Council (ESRC). Not only does the ECB hold a central role in macro-economic policy formation and implementation within the Euro area, but it has also played a key role in helping the financial system to respond to the current crisis. It is plain to see that, together with other national central banks, it will continue to play a similarly vital role in the future working of the financial markets. It logically follows that, in establishing a macro-prudential supervisory body such as the ESRC envisioned by the Report, it is essential that the ECB is appropriately involved.

Whilst necessary, this is not in and of itself a sufficient condition for the success of the ESRC, achieving which requires that several questions need to be fully addressed: how the ECB's role in the euro area relates to the role of the Commission and the 3L3 committees in the EU as a whole and to the role of the EU's non-Euro area national central banks; how the ECB's focus on banks relates to financial institutions more broadly; how the ECB can maintain its independence when the LOLR function is ultimately the responsibility of national governments on behalf of taxpayers; and how both macro-prudential analysis and crisis management in Europe relate to the G20 arrangements being organised through bodies such as the FSB and IMF at global level. In proposing to form the envisaged ESRC under the auspices of the ECB, whilst proposing its membership to include the General Council of the ECB, the 3L3 chairpersons and the Commission, the Report starts to identify useful answers to these questions. This is welcome but the further details, which will need to be agreed to more fully address these complexities, will require careful thought and further articulation. Also important will be the details of the transmission mechanism through which macro-prudential concerns flow, when necessary, into micro-prudential supervision; and vice versa. It is important that any such changes make a positive difference, so there should be clarity of objectives and as to how success is to be measured.

*Micro-prudential Supervision:*

As regards the supervision of large financial institutions operating in the capital markets, colleges of supervisors have been endorsed by the G20 and the EU. We now need to build on the consensus in this area to achieve an integrated and workable regime, suited to the varied characteristics of different group structures. Within this global framework, we think that colleges of supervisors can also play a significant and deeper role at European level, with the home supervisor in each case in the lead and, subject to suitable clarification of the operational details, with EU supervisory Authorities providing oversight.

We share the Report's view that such a micro-prudential supervisory structure requires both delivery through strong national supervisors, fully responsible on a day-to-day basis (as national level is where intimate local knowledge and the fiscal burden lie), and effective harmonisation and coordination of rules at EU level. The existing development of the 3L3 committees has already provided important experience in how to move toward achieving such a level of effective coordination and harmonisation. We agree with the Report's view that this should be pushed further, with these bodies being better supported to deliver a far more consistent, high quality set of EU rules. National authorities should welcome their engagement in these fora, which provide the opportunity for them to challenge and be challenged by their peers as they strive to achieve desired outcomes most effectively. In this context, whilst wishing to see development consistently across each of the 3L3 committees and their respective areas of competence, ICMA will continue to have a particularly keen interest in supporting the evolution of CESR and the rules applicable for the securities markets. Reflective of their divergent circumstances, views amongst ICMA's membership as to how far and how fast this further development can efficiently proceed are, however, the subject of continued debate. We are agreed though that it is important that an effective supervisory system be established and in such a way as to make it as efficient as possible.

The further changes envisioned by the Report, involving stage 2 transformations of the 3L3 committees into Authorities and forming them into the European System of Financial Supervision (ESFS) present incremental challenges and complexities. In particular there are issues associated with clearly defining the respective roles and powers of national supervisors and the ESFS, including the potential need to effect treaty changes. Recommendation 22 of the Report provides a starting point for this, though rather making the key day-to-day supervision role of national supervisory authorities look like an afterthought. Again more detailed proposals, covering not only processes and structures but also content and regulatory approach, will need to be elaborated to address these complexities. Amongst the aspects that particularly call for further elaboration are how arrangements will work for different group structures, including, for example, those where the group is headquartered outside the EU. Nevertheless some of our members, particularly those with widely dispersed pan-EU retail networks, consider that a move towards a more integrated supervisory system, inspired by the fully decentralised Eurosystem model, is urgently needed. The aim should be to develop a single consistent approach that works effectively to meet the variety of demands different structures impose.

When considering the Communication's proposed acceleration of this element of the Report some of our members, as previously, see this as urgent appreciating that acceleration could deliver highly desirable benefits. Others equally perceive too much haste as a significant problem and consider that a way needs to be found of adequately ensuring in advance that all the relevant details are worked through to satisfactory conclusions and unintended consequences suitably avoided. ICMA stands ready to assist in the necessary detailed work to support the achievement of efficient progress.

*Regulation:*

For our members, the regulation of securities markets in Europe is a key concern. If the European market is to be able to compete globally, it needs to be fully integrated, with consistent implementation of regulations throughout the EEA. Thus ICMA is particularly pleased to see the Report's emphasis on equipping Europe with a consistent set of rules. We welcome the proposals in the Report to take action to identify and, wherever it makes sense, to remove exceptions to harmonisation. Indeed we are concerned

that Recommendation 10 seemingly stops short of this aim, including, as it does, the proviso that "...a Member State should be able to adopt more stringent national regulatory measures...". That said, for harmonised rules and common standards to be a good idea, they need to be the right ones. Again we are keen that their formation should take due account of the global dimension and respect the roles of the different actors, with national supervisors empowered to achieve desired outcomes mindful of local constraints.

The Report also includes recommendations concerning various new EU regulations that should be established. A number of these, such as a regulation concerning Credit Rating Agencies, have already been the subject of Commission proposals and we will continue to comment in the applicable workstream. Others, such as extending registration and information requirements to systemically important hedge funds, where an immediate key question is what falls within the scope, will similarly become the subject of Commission proposals in which we shall become actively engaged. We believe however that it would be helpful if, as was the case with the FSAP, a clear over-arching framework is put in place to cover the various proposals that are now being brought forth and provide a benchmark against which delivery can be reviewed and measured.

*Self-regulation:*

Before closing, we would like to comment on one other aspect of the Report which is of particular significance from ICMA's perspective: paragraph 52 calls for review of regulatory policy, in order to identify how to correct regulatory weaknesses, to be "mindful of the usefulness of self-regulation by the private sector". ICMA is an affiliate member of IOSCO and a member of the IOSCO SRO Consultative Committee. ICMA is also a member of the International Council of Securities Associations, a global forum for securities market trade associations and non-governmental regulatory organisations, whose aim is to encourage the sound growth of the international securities markets by promoting harmonisation in the procedures and regulations of those markets. It follows that ICMA believes strongly in the benefits that self-regulation can bring, complementary to those of public regulation. ICMA fully supports the Report in also highlighting the need for there to be a "check that where there is self-regulation it is being properly implemented".

*Conclusion:*

At ICMA, we are committed to rebuilding orderly capital markets and to working closely with governments, central banks, regulators and the constituencies we serve to achieve a fair balance between the interests of market participants and the regulatory authorities. We hope you find the comments herein to be useful in furtherance of your proposals and stand ready to provide you with such further inputs as you might find useful.