

European Commission
DG Internal Market
Unit G1 ("supervision consultation")
B-1049 Brussels

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Response submission from ICMA (Register ID number: 0223480577-59)

Re: Consultation on Commission Communication of 27 May 2009 on European Financial Supervision

Introduction:

This response addresses the consultation of interested parties launched by the Commission on 27 May, in respect of Financial Supervision in Europe. We thank you for this further opportunity to express our views on this important topic. ICMA is a pan-European association of over 40 years standing, 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 and our particular interest in new regulation derives from the extent to which it impacts on global 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 further significant contribution, to the current debate on improving the supervision of the European financial services sector, that is provided by publication of the Commission's Communication of 27 May 2009, "European financial supervision" ("the Communication"). We understand that the Commission envisages that the legislative changes to give effect to the framework for EU supervision set out in the Communication will follow in the autumn of this year, after further consultation of stakeholders, and should be adopted in time for the renewed supervisory framework to be up and running during 2010. We also note the broadly supportive conclusions of Ecofin and the European Council, following from their respective June meetings. 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.

We also note that the Communication is based on the proposals on supervision contained in the report of the de Larosière group of 25 February 2009, on which the Commission has already carried out a public consultation. We contributed a response to that earlier consultation (which can be reviewed at <https://www.icmagroup.org/ICMAGroup/files/22/224dca57-9ba2-48fc-8e45-b2392a9a449e.pdf>). Our views expressed herein in some cases restate and otherwise build upon those previously expressed.

Overarching considerations:

We fully support the prompt establishment of the European Systemic Risk Council and the European System of Financial Supervision, along the lines supported by the Council.

Before moving to considering certain specific aspects of the Communication, there are a couple of other overarching considerations to which we would like to draw attention. Firstly we reiterate that 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 Communication is quite understandably on the EU. Nevertheless 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). This should not present a barrier to the Commission's continued efforts to advance proposals to improve financial supervisory arrangements within the EU, albeit that we believe it is very important that development of further details adequately takes the international dimension into account. Secondly the Communication's principal focus thus far is naturally on the revised structural arrangements that should be put in place within the EU. As the development of these proposals continues to advance, we trust that more detailed consideration will be given to the development of specific, tangible steps that will contribute to the key objectives of raising the quality and consistency of supervision.

Macro-prudential Supervision:

Turning to specific proposals of the Communication, we firstly consider the European Systemic Risk Council (ESRC). The Communication helpfully elaborates the Commission's thinking on role and responsibilities; and on composition and functioning. Generally we consider that these details are moving in a helpful direction and form a sound basis upon which to further develop legislative proposals.

Given ICMA's particular focus on the securities markets, we are particularly pleased to see the recognition given to the need to involve, alongside the central bankers, not just the chairpersons of the three European Supervisory Authorities but also representatives of national supervisory authorities. We note that the latter is proposed to be based on the application of a "1 + 1 formula", but suggest that it be made clear that the ESRC may treat this formula flexibly in case its agenda would benefit from the involvement of additional individuals from relevant authorities. More broadly, we consider that specific steps should be taken in the design of the ESRC in order to address the conflict that may arise between its wide mandate to "monitor and assess potential threats to financial stability" and the independent role of central banks in the EU with respect to the setting of monetary policy. Also, consistent with our overarching concern about achieving international consistency, we suggest that the role of the ESRC should be further enhanced, so it is not just be to "liaise" with the IMF and other applicable global counterparts but rather to specifically coordinate efforts with them.

We consider that for the new supervisory framework to contribute effectively it will be necessary to determine suitable details for the transmission mechanisms through which macro-prudential concerns flow, when necessary, into micro-prudential supervision; and vice versa. Market participants should be involved in the work of the ESRC via effective consultation and, where appropriate, direct participation in technical advisory groups. The ESRC should also make relevant information available on a timely basis, which financial institutions may utilise as an input for their own stress models and risk assessments. Concerning the collection of information, the ESRC should wherever possible access the large amounts of data already collected, rather than imposing additional reporting obligations.

Micro-prudential Supervision:

Similarly, with respect to the European System of Financial Supervision (ESFS) the Communication helpfully elaborates the Commission's thinking on role and responsibilities; and on composition and operational structure. Again, we generally consider that these details are moving in a helpful direction and form a sound basis upon which to further develop legislative proposals. In particular we share the Communication's view that the micro-prudential supervisory structure requires both delivery through strong national level 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 of rules, towards a single rule book at EU level. This latter being a key element of the new structure, we believe that efforts should be made to define its content and scope more clearly. We also support the proposal to work towards transforming the existing 3L3 Committees into the three envisaged European Supervisory Authorities and the coordination of their efforts under the auspices of the ESFS.

Moreover, we welcome the fact that the European Supervisory Authorities will be granted certain specified powers. We also support colleges of supervisors as key actors in the supervision process of cross-border groups. To avoid any confusion in the evolution of the organisation of supervision we consider it important that their respective roles, responsibilities and powers will be fully elaborated in the Commission's forthcoming proposals. For cross-border groups it is important that regulation adequately recognises the move towards a global group supervision approach. Decisions will be taken at this level, applicable to both the consolidated group and its constituent entities. For these reasons we continue to see the need for further elaboration regarding how arrangements, especially for colleges of supervisors, will work in practice in the context of different group structures, including, for example, those where the group is headquartered outside the EU.

Subject to applicable recognition of fiscal concerns, we support the decision to give powers to the European Supervisory Authorities to develop binding technical standards in specific areas in Community legislation. Nevertheless we ask the Commission to clarify, as soon as possible, which are the specific fields in which the European Supervisory Authorities will be able to exercise such a control and the criteria underlying this choice. Furthermore, we would welcome clarification about how such technical standards would subsequently be adopted and modified if necessary. On a similar basis, we support the development of proposals that the European Supervisory Authorities be able to draw up interpretative guidelines and take decisions where differences of opinion exist among supervisors on the application of Community legislation. We believe these new arrangements will support delivery of a far more consistent, high quality set of EU rules. To make these new arrangements most effective we propose that clear communication processes are established, to avoid the possibility of conflicting messages at different levels of firms' supervisory relationships, and to enable firms to rely on, and act directly on the basis of, applicable decisions of the European Supervisory Authorities – all whilst fully respecting the normally applicable arrangements for day-to-day supervision under the continued responsibility of national level supervisors. This will play an important part in the satisfaction of our overall concern to see the achievement of higher quality supervision. In this context, whilst wishing to see development consistently across each of the European Supervisory Authorities and their respective areas of competence, ICMA will continue to have a particularly keen interest in supporting the evolution of CCSR and the rules applicable for the securities markets. We believe the case for the development of CCSR is particularly strong, as reflected by the original precedent of its having emerged as the first of the existing 3L3 Committees.

We note that the Communication envisages the role of the ESFS to encompass full supervisory powers for some specific entities. In particular it states that “European Supervisory Authorities shall be given the responsibility for the authorisation and supervision of certain entities with pan-European reach, e.g., credit rating agencies and EU central counterparty clearing houses”. Whilst we accept the logic for this proposal in the former case we support the Council conclusion that this should not be extended to the latter one, though we note that this should not remove such entities from the oversight of the ESRC. We also see that by extension similar argumentation could be used in favour of the European Supervisory Authorities becoming responsible for the supervision of many other “entities with pan-European reach”, albeit that any such arguments will have to face the same need to resolve questions relating to potential fiscal consequences. It may indeed be the case that in some situations this could be a desirable outcome, but nevertheless we believe that safeguards should be included to ensure that any such future increase in the scope of the European Supervisory Authorities’ role only occurs subsequent to the completion of full public review and due legislative process.

As regards the supervision of large financial institutions operating on a cross border basis we support the role of colleges of supervisors, as also endorsed by the G20 in relation to international colleges. We consider that the development of colleges, especially outside the EU institutional framework, will need to be sufficiently flexible to suit them to the varied characteristics of different group structures. A key aspect of the role of international colleges is to provide an appropriate forum for communication and coordination between applicable supervisory authorities, but even in absence of a single global regulation more can also be achieved, through steps such as the delegation of tasks and commitments to execute decisions taken in the college on a voluntary basis. To ensure clarity of understanding amongst all the involved parties, it will be beneficial if all international colleges are supported by memoranda of understanding clearly articulating their agreed modus operandi. Within Europe we perceive that these arrangements will be able to be taken further than is possible at the global level. In particular the role of EU colleges in delivering consolidated EU supervision should be elaborated, both in EU legislation and through the output of the European Supervisory Authorities. Ongoing participation of the competent European Supervisory Authority in EU colleges will be a key mechanism through which it can deliver its objectives. Consistent with our overarching concerns, the aim should of course be to raise both global consistency and the overall quality of supervision.

Regulation:

For our members, the regulation of securities markets, including the way in which prudential regulation impacts market intermediaries’ participation in them, 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 we are particularly pleased to see the Communication’s emphasis on equipping Europe with a consistent set of rules. We welcome the proposals in the Communication to take action to identify and remove “differences in the national transposition of Community law stemming from exceptions, derogations, additions or ambiguities in current directives”. 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. We propose that some guiding principles should be established to facilitate the forthcoming change process, ensuring that proposals are legally consistent, respectful of any applicable fiscal responsibility

considerations and practical. We believe that the development of an EU rulebook should: respect better regulation principles; be outcomes focused (rather than prescriptive); accept (safe) market innovation; be consistent with global standards; and be rolled out in a measured way so as to minimise excessive change burden on market participants.

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.