

COMMISSION

COMMISSION DECISION

of 23 January 2009

establishing the Committee of European Securities Regulators

(Text with EEA relevance)

(2009/77/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Regulators, the Committee of European Banking Supervisors and the Committee of European Insurance and Occupational Pensions Supervisors (hereinafter 'the Committees of Supervisors') in an increasingly integrated European financial market. A clear framework for the activities of these Committees in the area of supervisory convergence and cooperation was deemed necessary.

Whereas:

(1) As part of the so-called Lamfalussy process, the Commission adopted Decision 2001/527/EC of 6 June 2001 establishing the Committee of European Securities Regulators ⁽¹⁾ (hereinafter 'the Committee'). The Committee took up its duties on 7 June 2001, serving as an independent body for reflection, debate and advice of the Commission in the securities field.

(2) Fulfilling the provisions of Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005 amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 92/49/EEC and 93/6/EEC and Directives 94/19/EC, 98/78/EC, 2000/12/EC, 2001/34/EC, 2002/83/EC and 2002/87/EC in order to establish a new organisational structure for financial services committees ⁽²⁾, the Commission carried out a review of the Lamfalussy process in 2007 and presented its assessment in a Communication of 20 November 2007 entitled 'Review of the Lamfalussy process — Strengthening supervisory convergence' ⁽³⁾.

(3) In the Communication, the Commission pointed out the importance of the Committee of European Securities

(4) While reviewing the functioning of the Lamfalussy process, the Council invited the Commission to clarify the role of the Committees of Supervisors and consider all different options to strengthen the working of those Committees, without unbalancing the current institutional structure or reducing the accountability of supervisors ⁽⁴⁾.

(5) At its meeting of 13 and 14 March 2008, the European Council called for swift improvements to the functioning of the Committees of Supervisors ⁽⁵⁾.

(6) On 14 May 2008 ⁽⁶⁾, the Council invited the Commission to revise the Commission Decisions establishing the Committees of Supervisors so as to ensure coherence and consistency in their mandates and tasks as well as to strengthen their contributions to supervisory cooperation and convergence. The Council noted that specific tasks could be explicitly given to the Committees to foster supervisory cooperation and convergence, and enhance their role in assessing risks to financial stability. Therefore a reinforced legal framework regarding the role and tasks of the Committee in this respect should be provided.

⁽¹⁾ OJ L 191, 13.7.2001, p. 43.

⁽²⁾ OJ L 79, 24.3.2005, p. 9.

⁽³⁾ COM(2007) 727 final.

⁽⁴⁾ Council Conclusions 15698/07 of 4 December 2007.

⁽⁵⁾ Council Conclusions 7652/1/08 Rev 1.

⁽⁶⁾ Council Conclusions 8515/3/08 Rev 3.

- (7) The Committee should serve as an independent advisory group of the Commission in the securities field.
- (8) The Committee should also contribute to the common and uniform day-to-day implementation of Community legislation and its consistent application by the supervisory authorities.
- (9) The Committee does not have any regulatory powers at Community level. It should carry out peer reviews, promote best practices and issue non-binding guidelines, recommendations and standards in order to increase convergence across the Community.
- (10) Enhanced bilateral and multilateral supervisory cooperation depends on the mutual understanding and trust between supervisory authorities. The Committee should contribute to the improvement of such cooperation.
- (11) The Committee should also foster supervisory convergence across the Community. In order to be more specific about this objective, an indicative and open-ended list of tasks to be carried out by the Committee should be established.
- (12) In order to resolve disputes of a cross-border nature between supervisory authorities, in particular within colleges of supervisors, a voluntary and non-binding mediation mechanism should be provided by the Committee.
- (13) To benefit from the expertise acquired by the Committee and without prejudice to the powers of supervisory authorities, the supervisory authorities should be able to refer matters to the Committee with a view to obtaining its non-binding opinion.
- (14) The exchange of information between the supervisory authorities is fundamental to their functions. It is central for the efficient supervision of securities markets and for financial stability. Whilst the securities legislation imposes clear legal obligations on supervisory authorities to cooperate and exchange information, the Committee should facilitate practical day-to-day exchange of information between them, subject to relevant confidentiality provisions set out in the applicable legislation.
- (15) In order to reduce the duplication of supervisory tasks and thereby streamline the supervisory process as well as reduce the burden imposed on market participants, the Committee should facilitate the delegation of tasks between supervisory authorities, in particular in cases specified in the relevant legislation.
- (16) With a view to fostering convergence and consistency across the colleges of supervisors and thereby ensuring a level playing field, the Committee should monitor their functioning without constraining the independence of the members of the college.
- (17) Quality, comparability and consistency of supervisory reporting are central to the cost-efficiency of Community supervisory arrangements and the compliance burden on cross-border institutions. The Committee should contribute to ensuring that overlap and duplication is eliminated and that the reporting data is comparable and of appropriate quality.
- (18) Financial systems in the Community are closely linked and events in one Member State can have a significant impact on financial institutions and markets in other Member States. The continuing emergence of financial conglomerates and the blurring of distinctions between the activities of firms in the banking, securities and insurance sectors give rise to additional supervisory challenges at national and Community level. In order to safeguard financial stability, a system is needed at the level of the Committee, the Committee of European Banking Supervisors and the Committee of European Insurance and Occupational Pensions Supervisors in order to identify potential risks, across borders and across sectors, at an early stage and, where necessary, inform the Commission and the other Committees. Furthermore, it is essential that the Committee ensures that finance ministries and national central banks of the Member States are informed. The Committee has its role to play in this respect by identifying risks in the securities sectors and regularly reporting on the outcome to the Commission. The Council should also be informed of these assessments. The Committee should also cooperate with the European Parliament and provide it with periodic information on the situation in the securities sector. The Committee should not, in this context, disclose information on individual supervised entities.
- (19) In order to adequately deal with cross-sector issues, the activities of the Committee should be coordinated with those of the Committee of European Banking Supervisors, the Committee of European Insurance and Occupational Pensions Supervisors and the Banking Supervision Committee of the European System of Central Banks. This is of particular importance in addressing possible cross-sectoral risks to financial stability.

- (20) To avoid duplication of work, to prevent inconsistencies, to keep the Committee abreast of progress and to give it the opportunity to exchange information with the Committee of European Banking Supervisors and the Committee of European Insurance and Occupational Pensions Supervisors with regard to supervision of financial conglomerates, the Committee may participate in the Joint Committee on Financial Conglomerates.
- (21) Given the globalisation of financial services and the increased importance of international standards, the Committee should also foster dialogue and cooperation with supervisors outside the Community.
- (22) The accountability of the Committee towards the Community Institutions is of high importance and should be of a well established standard while respecting the independence of supervisors.
- (23) The Committee should draw up its own rules of procedure and fully respect the prerogatives of the institutions and the institutional balance established by the Treaty. The enhanced framework of the activities of the Committee should be accompanied by improved working processes. To this end, if consensus cannot be reached, decisions should be taken by qualified majority corresponding to the rules set out in the Treaty.
- (24) For reasons of legal security and clarity Decision 2001/527/EC should be repealed,

HAS DECIDED AS FOLLOWS:

Article 1

An independent advisory group on securities in the Community, called 'the Committee of European Securities Regulators' (hereinafter 'the Committee') is hereby established.

Article 2

The Committee shall advise the Commission, in particular as regards the preparation of draft implementing measures in the field of securities, including those relating to undertakings for collective investment in transferable securities (UCITS), on its own initiative or at the request of the Commission.

Where the Commission requests advice from the Committee, it may lay down a time limit within which the Committee shall provide such advice. Such time limit shall be laid down taking into account the urgency of the matter.

Article 3

The Committee shall fulfil the tasks assigned to it and contribute to the common and uniform implementation and

consistent application of Community legislation by issuing non-binding guidelines, recommendations and standards.

Article 4

1. The Committee shall enhance cooperation between national supervisory authorities in the securities field and foster the convergence of Member States' supervisory practices and approaches throughout the Community. To this effect, it shall carry out, at least, the following tasks:

- (a) mediate or facilitate mediation between supervisory authorities in cases specified in the relevant legislation or at the request of a supervisory authority;
- (b) provide opinions to supervisory authorities in cases specified in the relevant legislation or at their request;
- (c) promote the effective bilateral and multilateral exchange of information between supervisory authorities subject to applicable confidentiality provisions;
- (d) facilitate the delegation of tasks between supervisory authorities, in particular by identifying tasks which can be delegated and by promoting best practices;
- (e) contribute to ensuring the efficient and consistent functioning of colleges of supervisors in particular through setting guidelines for the operational functioning of colleges, monitoring the coherence of the practices of the different colleges and sharing best practices;
- (f) contribute to developing high quality and common supervisory reporting standards;
- (g) review the practical application of the non-binding guidelines, recommendations and standards issued by the Committee.

2. The Committee shall review the Member States' supervisory practices and assess their convergence on an ongoing basis. The Committee shall report annually on progress achieved and identify the remaining obstacles.

3. The Committee shall develop new practical convergence tools to promote common supervisory approaches.

Article 5

1. The Committee shall monitor and assess developments in the securities sector and, where necessary, inform the Committee of European Banking Supervisors, the Committee of European Insurance and Occupational Pensions Supervisors and the Commission. The Committee shall ensure that the finance ministries and national central banks of the Member States are informed about potential or imminent problems.

2. The Committee shall, at least twice a year, provide to the Commission assessments of micro-prudential trends, potential risks and vulnerabilities in the securities sector.

The Committee shall include in these assessments a classification of the main risks and vulnerabilities and indicate to what extent such risks and vulnerabilities pose a threat to financial stability and, where necessary, propose preventative or remedial actions.

The Council shall be informed of these assessments.

3. The Committee shall have in place procedures enabling the supervisory authorities to react promptly. Where appropriate, the Committee shall facilitate a joint assessment amongst supervisors within the Community on risks and vulnerabilities which may negatively affect the stability of the financial system of the Community.

4. The Committee shall ensure an adequate coverage of cross-sectoral developments, risks and vulnerabilities by closely cooperating with the Committee of European Banking Supervisors, the Committee of European Insurance and Occupational Pensions Supervisors and the Banking Supervision Committee of the European System of Central Banks.

Article 6

1. The Committee shall contribute to the development of common supervisory practices in the field of securities as well as on a cross-sectoral basis in close cooperation with the Committee of European Banking Supervisors and the Committee of European Insurance and Occupational Pensions Supervisors.

2. To this effect, it shall in particular establish sectoral and cross-sectoral training programmes, facilitate personnel exchanges and encourage competent authorities to intensify the use of secondment schemes, joint inspection teams and supervisory visits and other tools.

3. The Committee shall, as appropriate, develop new instruments to promote the development of common supervisory practices.

4. The Committee shall enhance cooperation with the supervisory authorities of third countries, in particular by their participation in common training programmes.

Article 7

1. The Committee shall be composed of high-level representatives from the national public authorities competent in the field of securities, including UCITS. Each Member State shall

designate a high-level representative from its competent authority to participate in the meetings of the Committee.

2. The Commission shall be present at the meetings of the Committee and shall designate a high-level representative to participate in its debates.

3. The Committee shall elect a chairperson from among its members.

4. The Committee may invite experts and observers to attend its meetings.

Article 8

1. The members of the Committee shall be required not to disclose information covered by the obligation of professional secrecy. All participants in the discussions shall be obliged to comply with the applicable rules of professional secrecy.

2. Whenever discussion of an item on the agenda entails the exchange of confidential information concerning a supervised institution, participation in such discussion may be restricted to members directly involved.

Article 9

1. The Committee shall regularly inform the Commission about the outcome of its activities. It shall have regular contacts with the European Securities Committee established by Commission Decision 2001/528/EC⁽¹⁾ and the competent Committee of the European Parliament.

2. The Committee shall ensure cross-sectoral consistency of work in the financial services sectors by regular and close cooperation with the Committee of European Banking Supervisors and the Committee of European Insurance and Occupational Pensions Supervisors.

3. The chairperson of the Committee shall have regular contact with the chairpersons of the Committee of European Banking Supervisors and the Committee of European Insurance and Occupational Pensions Supervisors, at least once a month.

Article 10

The Committee may set up working groups. The Commission shall be invited to the meetings of the working groups as an observer.

Article 11

The Committee may participate in the Joint Committee on Financial Conglomerates.

⁽¹⁾ OJ L 191, 13.7.2001, p. 45.

Article 12

Before transmitting its opinion to the Commission, the Committee shall, at an early stage, consult market participants, consumers and end-users extensively and in an open and transparent manner. The Committee shall publish the results of the consultations, unless the respondent requests otherwise.

Article 13

The Committee shall establish an annual work programme and transmit it to the Council, the European Parliament and the Commission by the end of October each year. The Committee shall periodically and at least annually inform the Council, the European Parliament and the Commission on the achievement of the activities set out in the work programme.

Article 14

The Committee shall work by consensus of its members. If no consensus can be reached, decisions shall be taken by qualified majority. The votes of the representatives of the Members of the Committee shall correspond to the votes of the Member States as laid down in Articles 205(2) and (4) of the Treaty.

Members of the Committee which do not follow the guidelines, recommendation, standards and other measures agreed by the Committee shall be prepared to present the reasons for this choice.

Article 15

The Committee shall adopt its own rules of procedure and organise its own operational arrangements.

With regard to decisions concerning amendments to the rules of procedure and elections to and dismissals from the Board of the Committee, the rules of procedure may foresee decision-making procedures that are different from those set out in Article 14.

Article 16

Decision 2001/527/EC is repealed.

Article 17

This Decision shall take effect on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 23 January 2009.

For the Commission
Charlie McCREEVY
Member of the Commission
