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from: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 25 September 2009

to: Mr Javier SOLANA, Secretary-General/High Representative

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Subject: Commission Staff Working Document - accompanying document to the

- Proposal for a Regulation of the European Parliament and of the Council on Community macro prudential oversight of the financial system and establishing a European System Risk Board
- Proposal for a Council Decision entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board
- Proposal for a Regulation of the European Parliament and of the Council establishing a European Banking Authority
- Proposal for a Regulation of the European Parliament and of the Council establishing a European Insurance and Occupational Pensions Authority
- Proposal for a Regulation of the European Parliament and of the Council establishing a European Securities and Markets Authority

**Impact Assessment**

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Delegations will find attached Commission document SEC(2009) 1234.

Encl.: SEC(2009) 1234



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.9.2009  
SEC(2009) 1234

**COMMISSION STAFF WORKING DOCUMENT**

*accompanying document to the*

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on Community macro prudential oversight of the financial system and establishing a  
European Systemic Risk Board**

Proposal for a

**COUNCIL DECISION**

**entrusting the European Central Bank with specific tasks concerning the functioning of the  
European Systemic Risk Board**

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing a European Banking Authority**

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing a European Insurance and Occupational Pensions Authority**

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing a European Securities and Markets Authority**

**IMPACT ASSESSMENT**

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## 1. Introduction

The Commission Communication of 27 May 2009, "European financial supervision"<sup>1</sup>, proposed changes to the architecture of European financial supervision in order to remedy shortcomings in the area of financial supervision revealed by the financial crisis of 2008-2009. Specifically, it proposed the creation of two new bodies:

- a **European Systemic Risk Council (ESRC)** which should monitor and assess risks to the stability of the financial system as a whole ("macro-prudential supervision"), and should provide early warning of systemic risks that may be building up and, where necessary, recommendations for action to deal with these risks;
- a **European System of Financial Supervisors (ESFS)** for the supervision of individual financial institutions ("micro-prudential supervision"), consisting of a network of national financial supervisors working in tandem with new European Supervisory Authorities (European Supervisory Authorities), created by the transformation of the existing Committees for the banking, securities and insurance and occupational pensions sectors<sup>2</sup>. The Communication proposed transferring to the new Authorities all of the current competences of these committees and granting them additional competences, including the following:
  - Developing proposals for draft technical standards;
  - Resolving cases of disagreement between national supervisory authorities, including within in colleges of supervisors;
  - Intervening in cases of manifest breach of Community law;
  - Exercising direct supervisory powers for defined entities;
  - Co-ordination and decision-making in crisis situations.

The Communication of 27 May (henceforth "the Communication") was accompanied by an Impact Assessment<sup>3</sup>, which was considered by the Impact Assessment Board on 22 April. The Board provided its comments on 24 April, and a revised Impact Assessment was sent to the Board on 18 May.

The Communication of 27 May stated that the Commission intended to bring forward, as soon as possible, the legislative changes to put in place the new framework for EU supervision, on the basis of the orientations set out in the Communication and after further consultation of stakeholders, so that the necessary measures could be adopted in time for the renewed framework to be up and running before the end of 2010. It invited the European Council to endorse this plan.

The Conclusions of the European Council of 18-19 June 2009<sup>4</sup> supported the creation of an ESRC (renamed European Systemic Risk Board, henceforth ESRB) and an ESFS, consisting

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<sup>1</sup> COM(2009) 252 final.

<sup>2</sup> Widely known as the "Lamfalussy level 3 committees": the Committee of European Banking Supervisors, the Committee of European Securities Regulators and the Committee of European Insurance and Occupational Pensions Supervisors.

<sup>3</sup> COM(2009) 715 final.

<sup>4</sup> Annex 5 to this Impact Assessment.

of three new European Supervisory Authorities. Among other things, the European Council stated the following:

- *"The European Council supports the creation of a European Systemic Risk Board..."*
- *"The European Council also recommends that a European System of Financial Supervisors, comprising three new European Supervisory Authorities, be established aimed at upgrading the quality and consistency of national supervision, strengthening oversight of cross border groups through the setting up of supervisory colleges and establishing a European single rule book applicable to all financial institutions in the Single Market."*
- *"the European Council stresses that decisions taken by the European Supervisory Authorities should not impinge in any way on the fiscal responsibilities of Member States. Subject to this and supplemental to the Council conclusions of 9 June 2009, the European Council agrees that the European System of Financial Supervisors should have binding and proportionate decision-making powers in respect of whether supervisors are meeting their requirements under a single rule book and relevant Community law and in the case of disagreement between the home and host state supervisors, including within colleges of supervisors."*
- *"European Supervisory Authorities should also have supervisory powers for credit rating agencies."*
- *The European Council welcomes the Commission's intention to bring forward, by early autumn 2009 at the latest, the legislative proposals to put in place the new framework for EU supervision."*
- *"The European Council invites the Commission to make concrete proposals for how the European System of Financial Supervisors could play a strong coordinating role among supervisors in crisis situations."*

The present Impact Assessment accompanies the proposals for legislative acts creating the ESRB and the ESFS. For the ESRB two draft legislative acts are proposed: (i) a Council and Parliament Regulation based on article 95 of the Treaty, creating the ESRB, and (ii) a Council Decision based on Article 105.6 of the Treaty, governing the role of the European Central Bank in the ESRB. For the ESFS three legislative acts are proposed, all of them Council and Parliament Regulations under article 95 of the Treaty, one Regulation for each of the proposed new European Supervisory Authorities: a European Banking Authority (EBA), a European Securities and Markets Authority (ESMA), and a European Insurance and Occupational Pensions Authority (EIOPA).

It should be noted, regarding the European Supervisory Authorities in the ESFS, that in order to determine the scope of certain of the powers conferred on them in the draft Regulations - in particular the power to propose draft technical standards - amendments to the relevant community legislation in the banking, securities and insurance and occupational pensions fields will be introduced. It is intended that such amendments to sectoral legislation will be brought forward shortly in the form of an "omnibus" directive with amendments to sectoral

legislation<sup>5</sup>. Annex 3 outlines the specific matters in the relevant community legislation which have been identified for inclusion among the future amendments.

This Impact Assessment builds on the analysis outlined in the Impact Assessment accompanying the Communication, and focuses in greater detail on those key decision points not already assessed previously. It therefore focuses on three particular aspects which were not covered in the first Impact Assessment but which must be determined before the legislative acts creating the ESRB and the ESFS can be presented, namely:

1. The competences and powers of the ESRB and the Authorities in the ESFS;
2. The organisation, structures and procedures of the ESRB and the Authorities in the ESFS;
3. Financing of ESRB and the Authorities in the ESFS.

## **2. Consultations and procedural issues**

A public consultation and a public hearing took place prior to the adoption of the Communication, as noted in the first Impact Assessment.

A second public consultation, on the contents of the Communication, was launched on 27 May, the day of adoption of the Communication, with a deadline for comments of 15 July 2009. Ninety-eight replies were received. A summary of the replies is available in annex 4.

An Impact Assessment Steering Group was constituted in order to steer the preparation of this Impact Assessment, comprising representatives from DGs: MARKT, ECFIN, SG, SJ, ENTR, EMPL, COMP, ADMIN, BUDG and SANCO. The Steering Group met twice on 25 June and 14 July 2009. The minutes of both meetings were made available to the Impact Assessment Board. The Impact Assessment was submitted on 22 July 2009 and discussed by the Impact Assessment Board on 28 August 2009.

The Board issued its opinion on 31 August 2009 and made a number of recommendations for the improvement of this report. These have been taken into account in this final version of the impact assessment. The principal recommendations were the following:

- Clarify that the independence of the ESAs, the ESFS the ESRB and members of their governing bodies is a specific objective of these proposals;
- Explain the need for interaction between micro and macro supervision on the basis of stylised examples;
- Clarify the notion of the "single rulebook" and explain the mechanism for creating it;
- Explicitly address how in substance the supervisory powers exercised by the ESAs could impact on Member States' fiscal responsibilities, and illustrate this with practical examples;

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<sup>5</sup> In addition, an amendment to the Regulation on Credit Rating Agencies will be necessary in order to give the European Securities and Markets Authority full supervisory powers in that area.

- 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;
- Clarify the arrangements for financing of the new agencies.

### **3. Problem definition**

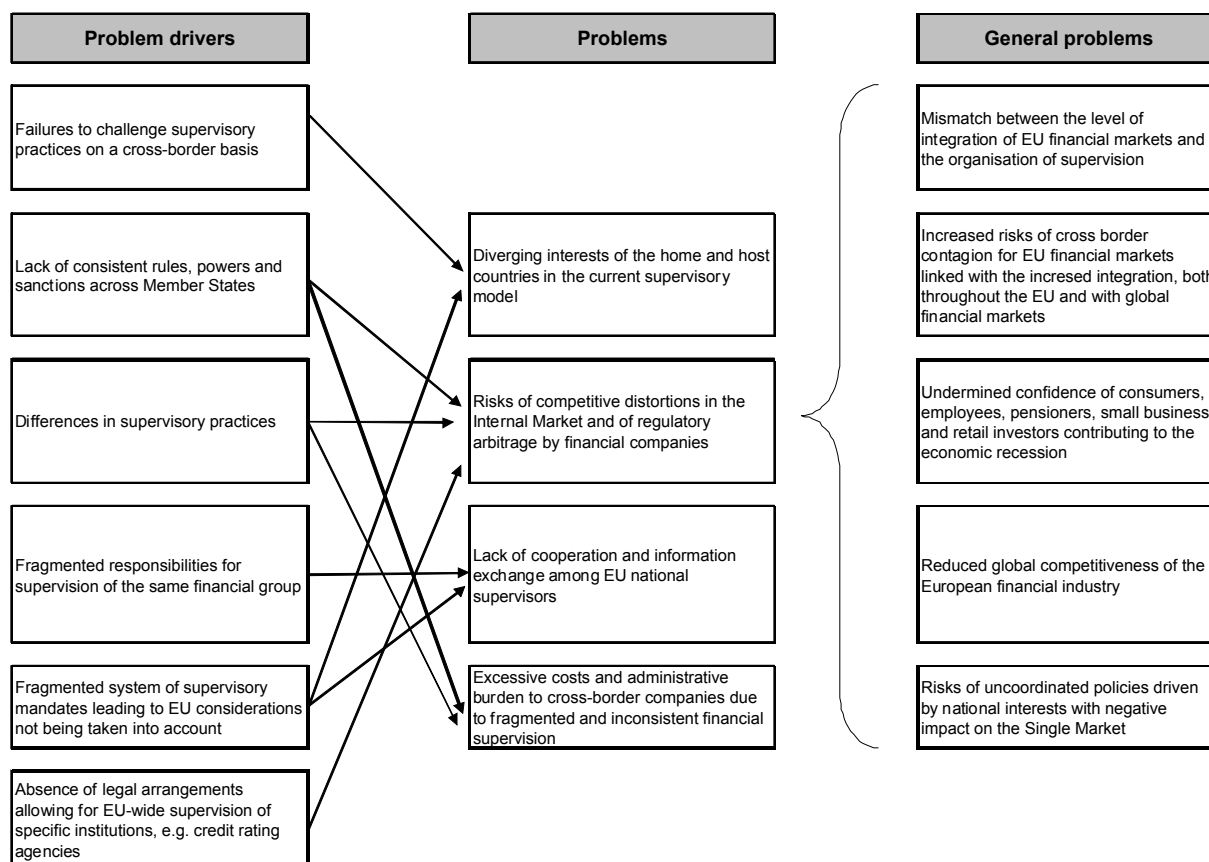
Regarding micro-prudential supervision, the problems identified in the first Impact Assessment can be summarised as follows:

- **Imbalance of interests of the home and host countries in the current supervisory model (resulting in a misalignment of incentives in particular in cross-border crisis management),**
- **Risks of competitive distortions in the Internal Market and of regulatory arbitrage by financial institutions (arising in part from differing supervisory rules and practices),**
- **Insufficient co-operation and information exchange between national supervisors,**
- **Excessive costs and administrative burden to cross-border companies due to fragmented and inconsistent financial supervision.**

The problem tree for micro-prudential supervision is presented again here for convenience:

**Figure 1. Problem tree: micro-prudential supervision**





Source: European Commission. Impact Assessment for the Communication 'European financial supervision' of 27 May 2009

The preferred solution for addressing these problems was to create a European System of Financial Supervision, comprising three European Supervisory Authorities, building on the existing Level 3 committees but with extended powers. This is not creating bodies from scratch, as is the case for the ESRB, but it is nevertheless an important evolution. In implementing this preferred option, a number of specific problems need to be addressed. The new bodies must be in a position to ensure greater coherence of supervision across EU Member States, via all of their interventions, both legally-binding and non-legally binding ones. They must also have a structure which ensures that the powers will be used in an appropriate manner. The budgetary needs of the new Authorities will be greater than the Level 3 committees, if only because the additional powers will require more staff. Specific issues to be tackled include the following:

- **Technical standards:** despite the efforts and progress achieved by the current level 3 committees, the prudential legislative framework has not yet attained the desired level of harmonisation and consistent application of rules in the EU. Ensuring a single set of harmonised rules is an ambitious objective which requires establishing new mechanisms that may help accelerate this process. Indeed, the current financial supervisory framework has been a good starting point but there is now a firm determination to move forward and reach a higher degree of consistency than the one achieved so far. To contribute to this, the Authorities will, in areas to be specified in the relevant sectoral legislation, develop draft technical standards. These standards constitute an effective instrument to strengthen Level 3 of the Lamfalussy structure, which is currently limited to the adoption of non-binding guidelines;

- Colleges of supervisors: one issue is to ensure the adequate functioning of colleges, particularly in terms of balancing the flow of information between home and host authorities. Another issue is to strengthen cooperation and facilitate joint decision-making between members of colleges.
- Emergency situations: there is a clear need for increased coordination between national supervisory authorities, in particular in case of adverse developments which potentially jeopardise the orderly functioning and integrity of the financial system in the EU. However, in some emergency situations, coordination may not be sufficient, notably when national supervisors alone lack the tools to respond rapidly to an emerging cross-border crisis. The new Authorities should therefore, in such exceptional circumstances, have the power to require national supervisors to jointly take specific action.
- Impingement of Member States' fiscal responsibility: the Member States have decided that decisions taken by the ESAs cannot impinge on their fiscal responsibilities<sup>6</sup>. This decision ensures that the principle of subsidiarity is respected, because the area of direct taxation is an exclusive competence of the Member States, and EU bodies cannot exercise any competences in that area. This limitation on the ESAs' activity potentially concerns decisions settling disagreements between national supervisors and decisions taken in emergency situations. The problem is to implement this limitation on the ESAs' powers in an effective way, while not hindering the activity of the ESAs in areas which do not impinge on the fiscal responsibilities of Member States.

Regarding macro-prudential supervision, the problems identified in the first Impact Assessment can be summarised as follows:

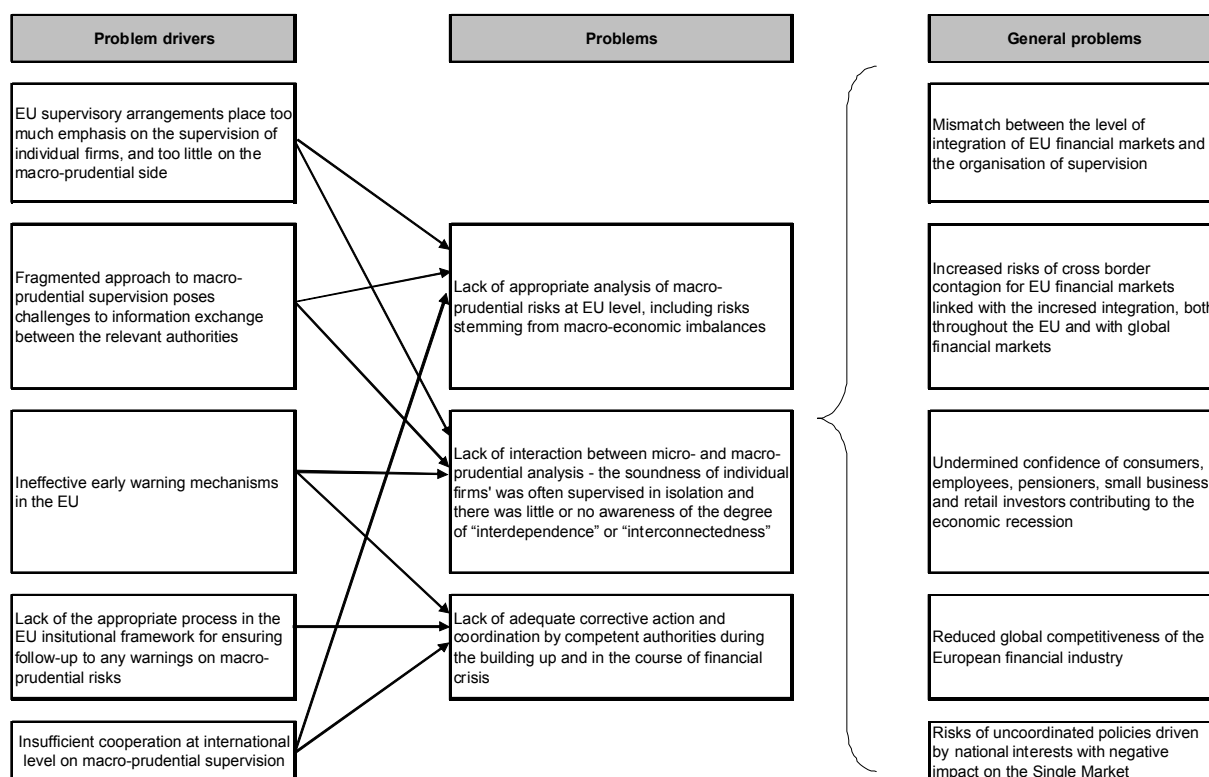
- **Lack of appropriate analysis of macro-prudential risks at EU level, including risks stemming from macro-economic imbalances. Currently, there is no EU body entrusted with this role;**
- **Lack of interaction between micro- and macro-prudential analysis. The soundness of individual firms was often supervised in isolation and there was little or no awareness of the degree of “interdependence” or “interconnectedness”;**
- **Lack of adequate corrective action, cooperation and co-ordination by competent authorities during the building up and in the course of financial crisis.**

The problem tree macro-prudential supervision is presented again here for convenience:

## Figure 2. Problem tree: macro-prudential supervision

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<sup>6</sup> European Council Conclusions quoted in the Introduction.



Source: European Commission. Impact Assessment for the Communication 'European financial supervision' of 27 May 2009

In determining a solution for addressing these problems, the first Impact Assessment took as its baseline scenario the EU retaining its fragmented approach to macro-prudential oversight, without introducing a mechanism for formally issuing and ensuring follow-up to warnings and recommendations. It analysed a range of possible options for developing a macro-prudential body, including **building on existing structures** using either the Economic and Financial Committee (EFC) or the European System of Central Banks (ESCB) or using the **new microprudential structure (ESFS)** by giving the leading role in macro-prudential supervision to the new Authorities with the support of the network of national supervisors. The analysis concluded that, on balance, a **new body** (the ESRB) should attain high level of effectiveness and provide for an adequate level of legitimacy. The envisaged architecture, status and operating procedures should allow this body to meet the objectives of efficiency, effectiveness and value for money in the most appropriate way. Having sole responsibility for macro-prudential risk warnings and an appropriate composition (bringing together the ECB, the national central banks, the new Supervisory Authorities as well as national supervisory authorities) would create valuable synergies, ensure an appropriate level of representation, and have a mutually reinforcing impact on the stability of the financial system.

In implementing this preferred option, a number of specific problems need to be addressed with regard to the ESRB. A new body is being created, with no precedents. The challenge is to create the body in such a way that its powers are appropriate for the tasks which it must carry out, namely that of analysing macro-economic risk and warning of potential systemic risks. Specific elements to be dealt with or taken into account include the following:

- The ESRB cannot be given binding powers unless it has legal personality, but despite this it must be as effective as possible in preventing financial crises.

- The warnings and recommendations of the ESRB must reach the right addressees and lead to the desired action, but without having the counter-productive effect of helping to trigger a crisis by being self-fulfilling through the reaction which they provoke.
- The issue of information needs is also a key one, as the ESRB will only be effective if it receives the information which it needs in order to carry out macro-prudential assessments effectively.
- The ESRB must have a secretariat so structured and located as to allow it to carry out its functions effectively and with a minimum cost.
- Subsidiarity must be respected in the structuring and activity of the ESRB, in matters such as the representation of Member States and other parties on the Board, decision-making procedures, and follow-up to warnings and recommendations.

## 4. Objectives

### 4.1. General objectives

This impact assessment takes as its starting point the conclusions reached in the first impact assessment and considers the options for best delivering the policy choices made in that assessment. Therefore, the specific objectives defined in the first impact assessment now constitute the general objectives of the current initiative, to facilitate this more detailed analysis.

For micro-prudential supervision, the specific objectives outlined in the first impact assessment can be summarised as:

- 1. Improve the coordination of cross border supervision.** This includes ensuring that the interests of all supervisors are well represented and taken into account by others, that cross-border supervisory colleges operate effectively, and that decisions are taken consistently across borders.
- 2. Raise the quality of financial regulation across the EU** by bringing about a level playing field for financial institutions operating in various Member States, including a consistent application of rules and the development of a single rulebook<sup>7</sup> and ensuring supervision and regulation is exercised independently.
- 3. Improve crisis prevention, coordination and management across the EU as a whole,** and in particular in areas where a decision in one Member State can have an impact of other Member States.
- 4. Improve effectiveness and efficiency of supervision for supervised institutions.**

The mandate of the ESFS will be to act with a view to: (i) improve the functioning of the internal market, including in particular a high, effective and consistent level of regulation and

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<sup>7</sup> A "single rulebook" is a long term policy objective. The expression "single rulebook" is used here and elsewhere to reflect two important goals - that community legislation be applied more consistently, and that as far as possible differences in national transposition of Community law stemming from exceptions, derogations, additions or ambiguities be identified and removed, so that one harmonised core set of standards can be defined and applied. Such a single rulebook will be a combination of European legislation adopted at level 1 and level 2, and technical standards based on proposals from the Authorities in areas clearly defined in sectoral legislation, including matters which are presently covered by non-binding level 3 guidelines.

supervision, (ii) protect depositors, investors, and policyholders and other beneficiaries (iii) ensure the integrity, efficiency and orderly functioning of financial markets, (iv) safeguard the stability of the financial system, and (v) strengthen international supervisory coordination.

For macro-prudential oversight, the objectives were:

1. **Develop a European macro-prudential risk assessment** to deal with the lack of appropriate analysis of macro-prudential risks at EU level, including risks stemming from macro-economic imbalances;
2. **Enhance the effectiveness of early warning mechanisms** by improving the interaction between micro- and macro-prudential analysis and ensuring the independence of the body issuing early warnings. The soundness of individual firms was often supervised in isolation and there was little or no awareness of the degree of “interdependence” or “interconnectedness”;
3. **Allow for risk assessments to be translated into action by the relevant authorities** to respond to the current lack of adequate corrective action, cooperation and co-ordination by competent authorities before a financial crisis occurs.

The mandate of the ESRB shall be to be responsible for the macro-prudential oversight of the financial system within the European Union in order to prevent or mitigate systemic risks within the financial system, so as to avoid episodes of widespread financial distress, contribute to a smooth functioning of the internal market and ensure a sustainable contribution of the financial sector to economic growth.

### **System-wide objectives**

In addition to the analysis in the previous impact assessment, it is important to ensure that the system as a whole functions effectively, that is, that the financial system is able to withstand shocks and the unravelling of financial imbalances or potential risks are spotted early by the relevant authorities and necessary action is taken. The latter can flow both ways, with the risks being identified at the macro level and action taken at the supervisory and regulatory level involving individual institutions, or alternatively in the opposite direction with risks in an individual institution identified at the supervisory level and action taken to prevent contagion at the macro level. This is an objective that will need to be considered in the selection of a number of options.

An example of the system-wide linkages could be that of remuneration. Given the widely held view that, to an extent, some remuneration policies may have led to excessive risk-taking in certain institutions which on aggregate may have contributed to putting the wider system at risk, this is a clear area where the need for action could fall to either or both elements of the system. At the macro level, if some remuneration policies are putting the entire system at risk, the ESRB may wish to make a warning or a recommendation to supervisors to adjust their remuneration policies to reflect this. Alternatively they may request the Authorities to develop guidelines or draft technical standards to ensure a more consistent application of community law if there is a divergence of practices.

Alternatively, the European Supervisory Authorities via national supervisors may identify risky remuneration policies in individual institutions and take action either to issue guidelines, or to channel the information on to the ESRB for analysis. In extreme cases, if such policies are the result of non-application of legal requirements, the Authority may be able to take action to require national supervisors to apply the requirements effectively.

As a specific objective, this means that it is important to achieve the appropriate degree of coordination between the macro and micro elements of the system. In particular it means that:

- the mandates and objectives of each are sufficiently clear and precise, so as not to create uncertainty over who is responsible for what;
- information sharing obligations are sufficient to ensure that the ESFS and the ESRB are able to discharge their responsibilities effectively, but not unduly burdensome on either market participants or the authorities themselves;
- there is appropriate cross representation between the ESFS and ESRB, but that neither institution dominates the other.

The mandates of the ESRB and ESFS (above) show that while each part of the system's objectives are clear and distinct, there is a limited (and necessary) degree of overlap between the two. Issues related to information sharing and cross-representation are discussed in sections 6.1.1, 6.1.2, 6.2.1 and 6.2.2.

#### 4.2. Specific and operational objectives:

Building on these general objectives, there are also more specific objectives for the purposes of this Impact Assessment, related specifically to the possible options to be considered in the creation of new bodies. The powers, structure, organisation, costs and revenues of the new bodies, the ESRB and the European Supervisory Authorities, must be appropriate for achieving the objectives determined above.

These specific objectives can be defined as:

##### ***Specific objectives with regard to the ESFS:***

- a. Assume all of the tasks of the current EU Committees of Supervisors: including the issuance of non-binding guidelines and the ability to give advice on certain issues;
- b. Ensure a set of common rules to complement non-binding guidelines at level 3 of the Lamfalussy structure, ensuring a level playing field for financial institutions and minimising the risk for regulatory arbitrage;
- c. Ensure a consistent application of EU rules: together with a set of common rules, the development of a single rule book which will increase certainty, predictability and a greater likelihood of supervisory best practice spreading;
- d. Determine how to ensure a common supervisory culture, including ensuring colleges of supervisors develop successfully and consistently;

- e. Determine whether/how to grant full supervisory powers for certain institutions: including ensuring that a coherent balance is struck between national and pan-EU supervision;
- f. Determine how to co-ordinate and effectively manage crisis situations, to ensure that decisions in one Member State do not have negative effects in other Member States;
- g. Ensure access to necessary information to facilitate the achievement of the objectives outlined above;
- h. Member States have a core responsibility in preserving financial stability in crisis management, in particular with regard to stabilising and resolving individual ailing financial institutions. A mechanism should be established to ensure that measures by the Authority do not impinge on the fiscal responsibilities of Member States, while not unduly hindering the effectiveness of the new Authorities.;
- i. Ensure the independence of the members of the Boards of the ESAs in the fulfilment of their tasks as well as the independence of the institution as a whole.

***Specific objectives with regard to the ESRB***

- a. Establish adequate procedures to obtain information about macro-economic risks for financial stability;
- b. Identify macro-prudential risks in Europe (and analyse the interconnection with individual financial institutions' soundness);
- c. Issue warnings to the relevant actors and recommend the appropriate actions;
- d. Determine how to achieve effective follow-up to warnings/recommendations;
- e. Ensure the independence of the members of the ESRB in the fulfilment of their tasks as well as the independence of the institution as a whole.

In order to achieve these specific objectives, a number of decisions need to be taken with regard to the particular powers, organisation and financing of the ESFS and the ESRB. Thus, the operational objectives can be defined as granting the ESFS and the ESRB the correct powers, organisation and financing so as to achieve the specific objectives detailed above.

## **5. Identification of policy options**

### **5.1. ESFS**

#### ***5.1.1 Powers and competences of the Authorities in the ESFS***

Regarding the precise powers and competences to be granted to the European Supervisory Authorities (ESAs) in the ESFS, the following discussion considers the categories of powers and competences covered in the Communication, and the horizontal issue of safeguards to prevent the Authorities taking actions which impinge upon the fiscal responsibilities of

Member States. It takes for granted that all of the current powers of the Level 3 Committees will be transferred to the new Authorities, as this issue was covered in the previous Impact Assessment. It does not consider the option of granting to the European Supervisory Authorities competences falling below those of the Level 3 committees, as this would be out of line with the conclusions of the previous Impact Assessment and the Communication.

The discussion of powers and competences therefore focuses on the question of which additional powers and competences should be granted to the European Supervisory Authorities, on top of those currently held by the Level 3 committees. In each case, the baseline is considered to be the powers/competences, which the Level 3 committees currently have.

It should also be emphasised again here that, with regard to binding technical standards, draft sectoral legislation will be introduced in order to specify precisely in which areas the powers granted to the European Supervisory Authorities can be applied. The granting of full supervisory powers for any particular category of institution will also involve sectoral legislation. With regard to the powers of the Authorities in the field of dispute settlement, this can only be exercised in areas in which co-operation, coordination or joint decision-making between supervisors is required by sectoral legislation, and some modifications to sectoral legislation will be necessary in order to clarify when this is the case.

The European Supervisory Authorities will always have the right to address an opinion to the Commission on such prudential matters, either at the request of the Commission or at their own initiative. They should be able to adopt such opinions on prudential assessments by Member States on mergers and acquisitions in the financial sector, covered by Directive 2007/44/EC (with or without a Community dimension) and to publish such opinions.

#### **5.1.1.1. Powers to ensure a single set of harmonised rules**

The options for consideration here are the following:

1. The power for the Authorities to adopt guidelines and recommendations only, together with level 2 implementing rules adopted by the Commission under current procedure (baseline scenario). Under this option, in order to promote convergence of prudential rules the European Supervisory Authorities would have the capacity to issue guidelines and recommendations addressed to national authorities. Non-binding guidelines and recommendations may be addressed to national supervisors and market operators in order to provide guidance on the application of EU regulatory provisions. There would thus be no changes to the "Lamfalussy system" of legislation, with level 2 measures adopted by the Commission with comitology and non-binding level 3 measures.
2. Option 1, plus the power to make proposals to the Commission for binding technical standards, in areas to be specified in sectoral legislation. In order to achieve the objective previously mentioned, the Authorities would also, in areas specified in the relevant sectoral legislation, develop draft technical standards. These draft standards would be submitted to the Commission for endorsement (accompanied as appropriate by a proportionate analysis of the potential related costs and benefits) in the form of regulations or decisions so as to give them direct legal effect.



3. A theoretical third option, for the Authorities to themselves adopt binding technical standards, must be ruled out at the outset as it would conflict with the Treaty based responsibilities of the Commission and give the Authorities discretionary powers, requiring a revision of the Treaty.

#### 5.1.1.2. Powers to bring about consistent application of EU rules

The options for consideration here are the following:

1. No powers (baseline). Under this option, in line with the current competencies of Level 3 Committees, the European Supervisory Authorities would have no powers to contribute to the consistent application of EU rules, that is, they have no powers to ensure consistent application of Community rules nor any powers to settle disputes between home and host authorities.
2. Option 1, mediation role only in case of disagreement between national supervisors. According to this mediation role, the European Supervisory Authorities should encourage and facilitate the dialogue between national supervisors in order to find a common point of understanding.
3. Option 2, binding dispute settlement powers, in case of disagreement between national supervisors. In the event of inability to reach an agreement the European Supervisory Authority would adopt a decision that would settle the dispute. This decision would be binding for the parties concerned.
4. Option 3, plus a power to intervene to warn national supervisors of breaches of Community law. Besides the capacity to settle disputes through legally binding decisions, the European Supervisory Authority could investigate situations where national supervisors may have diverged significantly from Community legislation. Whenever a breach of Community law is observed, the European Supervisory Authorities would then issue a recommendation for action addressed to the relevant national authority. The Commission could subsequently intervene to make such a recommendation binding.
5. Option 4, plus the possibility for the European Supervisory Authorities to adopt a binding decision addressed to a market operator (in respect to Community law which is directly applicable to them, i.e. Regulations), in cases where a Commission decision rendering an ESA recommendation binding has not been followed by a national supervisor

#### 5.1.1.3. Ensure a common supervisory culture and consistent supervisory practices

The options for consideration here are the following:

1. Same powers as the Level 3 committees (baseline). The European Supervisory Authorities would continue to build a common supervisory culture with the same powers held at present by the Level 3 committees. Thus, the European Supervisory Authorities would carry out tasks such as:
  - Issuing guidelines and technical interpretations to promote the convergence of supervisory practices;
  - Fostering training programmes and exchange of personnel;
  - Conducting peer analysis, and
  - Providing advice to supervisors.
  -
2. Option 1, plus power to participate in colleges of supervisors. The European Supervisory Authorities would be granted the possibility to participate in colleges of supervisors. By participating in the main colleges of supervisors, the Authorities would contribute to promoting the efficient and consistent functioning of colleges and monitoring the coherence of the implementation of Community legislation across colleges.
3. Option 2, with a requirement to participate in all colleges of supervisors. The European Supervisory Authority would be present in all colleges of supervisors to ensure the consistency and convergence of all decisions adopted by these colleges.

#### 5.1.1.4. Full supervisory powers

The options for consideration here are the following:

1. No possibility of powers (baseline). At present, day-to-day supervision of financial entities is in all circumstances carried out by national supervisory authorities. The baseline implies no supervisory powers for any European body.
2. Option 1, the possibility of exclusive supervisory powers for entities with a Community-wide reach, to be granted by sectoral legislation.
3. Option 2, the possibility of supervisory powers for certain entities shared with national supervisors. The supervision of these entities would be carried out both by national supervisors and European Supervisory Authorities.

It should be noted that the Regulations establishing the European Supervisory Authorities would not grant them any supervisory powers, but would only open the possibility for subsequent legislation to grant them such powers. This is only envisaged in cases where there is directly-applicable EU legislation regulating the entities in question (Regulations, not Directives transposed by national legislation). That is why the discussion in this document does not concern the pros and cons of granting full supervisory powers to the Authorities for any particular category of institution (although it should be noted that the only category of financial institution currently regulated – or shortly to be regulated – by EU Regulation is Credit Rating Agencies).

#### 5.1.1.5. Powers in emergency situations:

As a preliminary remark, an issue arises with regard to the definition of emergency situations. It is impossible to define exhaustively in legislation when a cross-border emergency situation does and does not exist. Having noted this, the options for consideration here are the following:

1. No powers (baseline). Following the baseline scenario, the European Supervisory Authorities would not be involved in either coordinating the actions of national supervisory authorities nor take any decisions to that effect.
2. Option 1, coordination powers only. Under this option, the European Supervisory Authorities would have a coordinating role in emergency situations by facilitating cooperation and exchange of information between the competent authorities.
3. Option 2, coordination power plus the power to take binding decisions (addressed to financial institutions and/or to national supervisors). Serious threats to the orderly functioning and integrity of financial markets or the stability of the financial system in the Community require a swift and concerted response at Community level. The Authority could therefore be able to require national supervisory authorities to take specific actions to remedy an emergency situation. As the determination of the existence of an emergency situation involves a significant degree of appreciation, this power could be conferred on the Commission. Such powers would be subject to the safeguard provisions discussed below, ensuring that decisions by the Authorities would not impinge on the fiscal responsibilities of the Member States.

#### 5.1.1.6. Powers to collect and manage micro-prudential information

This power should be analysed separately as regards information for colleges of supervisors, and information for carrying out the other tasks of the Authorities. With regard to colleges of supervisors, there are three options:

1. No information for colleges of supervisors (this is the baseline);
2. Option 1: receive information relating to individual financial institutions, as a member of all colleges of supervisors, but no role in management or distribution of information;
3. Option 2: receive information relating to individual financial institutions, as a member of colleges of supervisors, and in addition play a role in management or distribution of information, in order to ensure that all relevant information is received by all members of the college.,

With regard to information relating to the other tasks of the Authorities, there are again three options:

1. The same information which the Level 3 Committees receive, namely aggregated anonymised information only (this is the baseline);

2. Option 1: only information on individual financial entities which are directly supervised by a European Supervisory Authority;
3. Option 2: option 1, plus the possibility of ad hoc information requests to national supervisors or other relevant national authorities in connection with any matter related to the execution of the tasks of the Authorities.

For each category of information, the decision on whether the European Supervisory Authorities should have access to it must be taken in the light of the conclusions on the competences of the European Supervisory Authorities. Once the appropriate tasks and competences of the European Supervisory Authorities have been decided, it can be considered what information is necessary for the European Supervisory Authorities to fulfil that role adequately.

For each category of information, if it is considered that the European Supervisory Authorities should have access to that category of information, it should further be considered if they should be able to approach financial institutions directly in order to obtain it, or whether they should be obliged to obtain it via the national supervisory authorities.

#### 5.1.1.7. Safeguard for fiscal responsibilities of Member States

The Communication (section 4.2, part 8) states the following: "*Without prejudice to the application of Community law, and recognising the potential liabilities that may be involved for Member States, decisions under the above mechanisms shall not directly impinge on the fiscal responsibilities of the Member States.*" This was echoed in the conclusions of the European Council of 18-19 June 2009, which stated: "*decisions taken by the European Supervisory Authorities should not impinge in any way on the fiscal responsibilities of Member States.*" The options to be considered are the following:

1. No formal legal reference in the Regulations establishing the European Supervisory Authorities to safeguards for Member States' fiscal responsibilities, other than a recital, leaving no legal obligation on the European Supervisory Authorities to respect this principle other than the Treaty, which reserves direct taxation as a competence of the Member States;
2. Option 1, a general reference in the founding act of the European Supervisory Authorities, which does not stipulate which acts may impinge on Member States' fiscal responsibilities, combined with the standard right of Member States to appeal acts of the Authorities to the Appeal Board and the Court of Justice;
3. Option 2, the application of a formal safeguard procedure, requiring a Member State which considers its fiscal responsibilities to have been infringed to bring the matter to the attention of the Council, which could take a decision on the basis of a qualified majority

## 5.1.2. Organisation and structure of the Authorities in the ESFS

### 5.1.2.1. Joint Committee of European Supervisory Authorities

There is a need for the three new Authorities to coordinate their policies and ensure cross-sectoral cooperation so as to reflect the relevant market trends and realities.

The options to be considered are the following:

1. No Joint Committee for the ESFS at all (in which case the Joint Committee on Financial Conglomerates would need to remain in existence). This is the baseline.
2. Option 1: create a Joint Committee with no legal personality, ensuring mutual understanding, cooperation and consistent supervisory approaches between the three new Authorities. A Subcommittee to the Joint Committee could be established to specifically address cross-sectoral issues, including financial conglomerates, and ensuring a level playing field. While the actual decisions on, for example the Financial Conglomerates Directive, would be taken by the individual ESAs, the Joint Committee should ensure that common decisions are taken by the Authorities in parallel. Option 2: to, create a Joint Committee with legal personality as a Community body, with specific tasks and competences, notably with respect to cross-sectoral issues.

### 5.1.2.2. Voting procedure

The options to be considered are the following:

1. Qualified majority voting (to be considered as the baseline based on the practice in the Level 3 committees);
2. One member one vote, or
3. A hybrid system, involving for example QMV for certain issues, otherwise one member one vote.

### 5.1.2.3. Involvement and role of relevant stakeholders

The Communication states "*The European Supervisory Authorities should liaise in a structured way with all relevant stakeholders, including consumers.*" This structured liaison could involve consultation with the stakeholder group or groups, who would in turn communicate the opinions of existing or new Commission financial services groups representing a broader stakeholder community. The options are:

1. No formal standing stakeholder group, but the possibility for the European Supervisory Authorities to make public consultations (this is the baseline);
2. One permanent stakeholder group for all European Supervisory Authorities;
3. Specialised separate stakeholder groups for each European Supervisory Authority;
4. Ad hoc consultative groups on different topics.

### *5.1.3. Financing of the Authorities in the ESFS*

The current Level 3 Committees of Supervisors are financed by contributions from national supervisory authorities, complemented by action grants for specific tasks (e.g. training) from the Community budget. However, since the new Authorities are to be classified as Regulatory Agencies for the purposes of Article 185 Financial Regulation, it will not be possible for them to receive funding from such grants. The baseline option in this impact assessment is therefore considered to be 100% Member State funding via national supervisors, as for the level 3 committees, without Community grants.

Due to the new Authorities' status as EU bodies, the Member State funding could be complemented by a subsidy from the EU budget. The Community contribution would be set at a level to balance expenditure and revenue and ensure continuity of the Authorities' respective missions. Any combination of proportions of funding by the Community and the Member States is possible.

Although it is also theoretically possible that the new Authorities could be 100% financed by the Community, the constraints of the Community budget under the current financial perspective (2007-2013) have to be duly taken into consideration. In case of Community funding – be it partial or total – the Framework Financial Regulation (Commission Regulation No 2343/2002) will be applied to the new Authorities.

The following options for financing the European Supervisory Authorities are therefore considered:

1. Full funding of ESAs' costs by the Member States (contributions from national supervisory authorities);
2. Combined financing from the Community budget and from the Member States;
3. Full funding of ESA's costs from the Community budget.

## **5.2. ESRB**

Building on the analysis in the previous impact assessment, the following assessment considers at a more granular level the various options for designing and operationalising the ESRB in the most effective and efficient manner and at the minimum cost to achieve the specific objectives, identified in chapter 4 above.

### *5.2.1 Powers and competences of the ESRB*

#### 5.2.1.1. Follow up to warnings and recommendations

The options for consideration here are the following:

1. No follow up mechanism (baseline). The ESRB would be considered as a purely advisory body and there would be no required follow-up to its

warnings/recommendations. Addressees would be free to follow the ESRB advice or not.

2. Required follow-up. Under this option, the ESRB warnings or recommendations would be binding for the addressees which would be required to comply within a specific timeline.
3. Comply or explain (within a specific timeline). The follow-up of the ESRB warnings or recommendations would be ensured by a "comply or explain" mechanism according to which the addressees would have to comply with the decision within a specific timeframe or will be required to explain their decision not to comply. Under this option, addressees of recommendations would not be able to simply ignore a recommendation from the ESRB. They would be compelled to evaluate the recommendation and choose a line of action. This could be to follow what is prescribed in the recommendation or to choose a different approach, but the recommendation could not be ignored. If the addressee chooses not to follow the recommendation, it is required to detail the reasons for this.

#### **5.2.1.2. Information access**

The options for consideration here are the following:

1. No access (baseline). Under this option, the ESRB would only have access to information already in the public domain on financial institutions and the financial system.
2. Access to aggregated data as necessary (for example based on existing reporting procedures). The ESRB would collect ad-hoc or regular data on the financial system and institutions, on an aggregated basis, such that individual financial institutions cannot be identified.
3. Access to aggregated data and relevant information on individual institutions upon request. In addition to the regular collection of the aggregated data, upon reasoned request, the ESRB would be granted access to individual data when the entity, because of its size, cross-border nature or the risks posed, may be considered as systemic.

#### **5.2.1.3. Degree of publicity of warnings and recommendations**

The options for consideration here are the following:

1. All warnings and recommendations remain confidential. They would be transmitted only to the addressees and other relevant parties (e.g. ESAs, Council). This would be the baseline.
2. Full transparency. Warnings and recommendations would be automatically made public.
3. Publication according to general principles agreed in advance. General guiding principles would be defined to determine in advance, whether a decision should be made public or not (for example general risk warnings related to financial

developments at EU level could be made public as a rule to raise awareness among market participants while more targeted warnings/recommendations could be kept confidential in order to avoid counter-productive reactions of panic).

4. Publication to be decided on a case-by-case basis. The decision to publish or not a warning or a recommendation would be left to the ESRB as part of its discretionary power. This could be part of the follow-up mechanism. Warnings and recommendations would be confidential by default but the ESRB could decide to make a warning or recommendation public if it deems the follow-up to insufficient, or for any other reason. The publicity of the decision could in this case be used as an additional incentive to act.

## *5.2.2 Organisation and structure of the ESRB*

### 5.2.2.1. Size of board and scope of expertise

The options listed below are not mutually exclusive. The analysis will assess the appropriate balance between each of the groups identified below:

1. Baseline (current situation of fragmented macro-prudential supervision)
2. Central banks
3. Micro-prudential supervisors
4. Other bodies (such as the Commission, EFC chair, EEA country representatives)
5. Independent persons, including experts, academics etc.

### 5.2.2.2. Addressees of warnings

The options for consideration here are the following:

1. No specific addressees (baseline).
2. Member States only. Under this option, the addressees of ESRB warnings or recommendations would be the Member States (including supervisors). Warnings or recommendations could be addressed to one individual Member State or to a group of Member States, pointing out a particular risk and asking the Member State(s) to take corrective action –in the case of recommendation.
3. Supranational Authorities: ESAs and the Commission only. It could be envisaged that the ESA receive warnings or recommendations from the ESRB for measures falling under their field of competences or the Commission when legislative action is necessary.
4. Competent national authorities + individual institutions. Under this option, the ESRB would be entitled to issue warnings or recommendations to individual institutions or categories of institutions i.e. credit institutions, insurance companies, investment firms.
5. A combination of all the previously mentioned addressees. Under this option, the ESRB would be able to issue warnings and recommendations to any of the following



addressees: the ESAs, the Commission, Member States or more specifically, to competent national authorities.

### **5.2.2.3. Stakeholder involvement and other advisory bodies**

The options below refer to the modalities of involvement and not the frequency of consultation. Due to the nature and objectives of the tasks fulfilled by the ESRB it is neither feasible nor appropriate to undertake a consultation on all warnings/recommendations. Therefore the description and subsequent analysis of the options below assume that it will be up to the ESRB to decide about the criteria concerning the frequency of the consultation of stakeholders (i.e. according to the subject discussed, the urgency of the ESRB initiative etc.). The same applies a fortiori to the consultation of other advisory bodies deemed to provide a support to the ESRB 'on demand'.

1. None (baseline)
2. Public consultations. According to this option the ESRB would involve all concerned stakeholders through an open consultation using different means (internet, public hearing etc.) and deciding on a case by case basis the delay for the collection of inputs.
3. Through a stakeholder group. This option implies setting-up an appropriate framework for a structured dialogue with relevant stakeholders (industry, consumers, workers, academics). A permanent stakeholders group would be then established to advise regularly the ESRB
4. Ad hoc consultations. The ESRB could consult relevant stakeholders as appropriate.
5. Other advisory bodies, such as an Advisory Technical Committee. Under this option the ESRB could be assisted by an Advisory Technical Committee which would reflect the composition of the Board, i.e. it will include a representative of each national central bank and of each national supervisory authority of the Member States, two representatives of the European Commission and one representative of the EFC. The existing Banking Supervision Committee would provide the basis for setting-up the Committee.
6. Ad hoc consultations + Advisory Technical Committee. Under this option, consultations would comprise both the Advisory Technical Committee as well as any relevant stakeholders as appropriate.

### ***5.2.3. Funding of the ESRB: the Secretariat***

Regarding the set-up of the Secretariat in charge of assisting the ESRB in carrying out its tasks - both on the administrative/logistic side and on the statistical/analytical issues – the following options have been identified:

1. As baseline scenario we assume the absence of any Community initiative, i.e. the decision to live with the current (inadequate) EU arrangement for macro-prudential oversight and not establishing any EU Body (and related support structure) in charge of the detection of systemic risks and identification of remedial actions.
2. European Central Bank. The European Central Bank would make available the resources necessary to ensure the analytical, statistical, administrative and logistical

support to the ESRB. The Secretariat will be staffed with European Central Bank officials, and staff seconded from other Central Banks around the EU as appropriate. It will largely build on the well established network with national Central Banks and Supervisory Authorities on the extensive internal work in relation to European Central Bank/ESCB functions on financial stability monitoring.

3. Commission ("EFC model"). The Commission would be responsible for the provision of the analytical, statistical, administrative and logistical support to the ESRB and would undertake this internally, by setting up a dedicated unit within the Directorate General for Economic and Financial Affairs. The Structure would be similar to that provided to support the work of the EFC and of the EPC and would be managed by a Director, assisted by a group of officials. The Secretariat could be organized in 4-5 Units (according to geographical competence + one Unit for inter-institutional relationships and international relations and one for the organization of the ESRB meetings). The Structure could be either integrated into the Directorate "Macrofinancial Stability" or be under the direct responsibility of the Director-General to give it prominent political visibility.
4. A virtual network of Central Banks. Under this option the statistical and analytical work would be performed by the single Central Banks building on (the enhancement of) the existing network structures. It would also comprise a small secretariat provided by the European Central Bank (around 10 people) which would be responsible for the day-to-day management of the network and to deal with the administrative and logistical support to the Board, including organization of meetings. The European Central Bank secretariat would also ensure overall coordination of the network, including harmonization of methodologies and analytical tools. Each Central Bank would largely build on the structures already in place to fulfil their stability-related tasks. Central banks perform overall surveillance and analysis of the financial system (macro-prudential analysis). Analyses are undertaken to identify the effects that financial system structures, structural changes and integration developments have on financial stability.

## **6. Preliminary analysis of impacts and comparison of options**

In this section, the following score system is used for the analysis of impact of the options:

- Positive effect: from slightly positive (+) to strongly positive (++++)
- Negative effect: from slightly negative (-) to strongly negative (- - -)
- No impact: 0

## 6.1. ESFS

### 6.1.1. Powers and competences of the Authorities in the ESFS

#### 6.1.1.1. Powers to ensure a single set of harmonised rules

The existing procedure (baseline scenario) provides for the Commission to develop Level 2 detailed implementing rules in areas specified at Level 1. This approach is complemented by Level 3 non-binding guidelines developed by the existing European supervisory committees.

However, as has been seen from the recent financial market disruption, a strengthening of the single market in financial services to ensure consistent application and minimise regulatory arbitrage is necessary. This may mean in some cases areas that were previously guidelines should be mandatory. Additionally, given that financial service providers and markets can rapidly evolve, in some areas, even more rapid updating of standards is necessary. These areas often cover issues best left to supervisory experts to agree on. Finally, there may be new areas following on from the financial market disruption where more detailed/amended standards will be necessary.

Against this background, option 1 allows for the development, in certain pre-specified areas, of draft technical standards to complement Level 2 implementing measures. In the past, standards and guidelines published by Level 3 committees have provided very valuable guidance for the correct incorporation of EU legislation into national frameworks. However, since they are non-binding, they have not in all cases been able to play the role of effective legislation.

This option would reinforce those standards by granting the European Supervisory Authorities the capacity to submit draft technical standards. Where appropriate, transforming non-binding Level 3 measures binding would represent a significant step towards a single European rulebook.

However, this capacity would be rightly limited to those areas to be defined in sectoral legislation. Additionally, in developing the actual standards, the Authorities should use appropriate market analysis and consultation procedures before submitting the proposed standards to the Commission. This issue should be tackled in the sectoral legislation by defining the precise areas where the European Supervisory Authorities will have the power to propose binding technical rules<sup>8</sup>. As a safeguard, the empowerment for the authorities to develop standards would normally remain at Level 1.

Granting the European Supervisory Authority the power to autonomously adopt binding technical standards (option 2) is not legally feasible. Thus, the ability to submit draft standards for adoption by the Commission is the most effective way to ensure a single set of harmonised rules.

From the point of view of coherence, the Authorities are effectively a strengthened network of national supervisors. The Authorities are therefore best placed to identify the standards which are necessary. In this regard, the other competences and powers entrusted to European

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<sup>8</sup> See annex 3 for the areas in sectoral legislation which have been identified for the use of such a procedure for binding technical rules.

Supervisory Authorities provide them with the appropriate knowledge to develop technical standards. Thus, this competence is coherent with the proposed set of powers and tasks.

**Table 1.**

Options	Assessment criteria		
	Effectiveness	Efficiency	Coherence
Single rule book			
1. Baseline (Non-binding guidelines and recommendations)	0	0	0
2. Baseline + proposals to the Commission for binding standards	++	+++	+++

**6.1.1.2. Powers to bring about consistent application of EU rules**

The efforts to pursue a greater harmonisation of EU rules would be pointless if such rules are later applied inconsistently. The desired level of convergence in the supervision of financial institutions across the EU requires not only a single set of harmonised rules, but also a consistent application of such rules and common supervisory practices. Consequently, it would be coherent to entrust also the European Supervisory Authorities with this task.

The European Supervisory Authorities should facilitate coordination and joint decision-making between the national supervisors when applying EU rules. While fulfilling this task, the European Supervisory Authority should additionally verify the correct application of EU rules.

Two issues are involved under this heading: (i) settlement of disagreements between national supervisors, and (ii) procedure for breaches of EU legislation

Regarding settlement of disagreements between supervisors, the European Supervisory Authorities must coordinate the actions of supervisors to ensure a consistent application of EU rules. Nevertheless, this mediation may not be sufficient in those cases where there is a strong discrepancy between supervisors. Discussions between national supervisors are often blocked by conflicting interests or points of view. In these circumstances, it is essential to create a mechanism which allows the supervisor to arbitrate and provide a solution to the controversy.

Concerning incorrect or inconsistent application of EU rules, the two alternatives envisaged are either granting the European Supervisory Authority the capacity to take decisions requiring national supervisors to apply Community law correctly or just the possibility to issue a recommendation apply Community law correctly. The preferred option is the capacity to issue recommendations, with the possibility for the Commission to make such warnings binding if not followed by the national supervisor in question.

To overcome exceptional situations of persistent inaction by the competent authority concerned, the Authority could be empowered, as a last resort, to adopt decisions addressed to individual financial institutions. This power should be limited to areas of Community law directly applicable to financial institutions, and defined by the subject matter and conclusions in the Commission decision which it has to fully respect.

**Table 2.**

Options	Assessment criteria		
	Effectiveness	Efficiency	Coherence
1. Baseline (no powers)	0	0	0
2. Mediation role	+	++	+
3. Mediation + binding decision-making powers in case of disagreement	++	++	++
4. Mediation + 3 + power to warn of manifest breaches of EU law	+++	+++	+++
5. 4 + power to adopt decisions addressed to market operators	++++	+++	+++

#### 6.1.1.3. Ensure a common supervisory culture (including colleges of supervisors)

Until now, one of the main tasks of the Committees of Supervisors has been to contribute to the consistent application of Community directives and to the convergence of Member States' supervisory practices throughout the Community. As mentioned in the Communication "European Financial Supervision" of 27 May 2009, the new European Supervisory Authorities will take on all the missions of the current Committees of Supervisors.

It has been mentioned previously that the new Authorities should contribute to promoting the efficient and consistent functioning of colleges of supervisors and monitoring the coherence of the implementation of Community legislation across these colleges. Against this background, they should participate as observers in colleges of supervisors and receive all relevant information shared between the members of the college. The question is whether the European Supervisory Authorities should be required to participate in *all* colleges of supervisors or leave it up to the Authorities to decide in which colleges they want to participate.

From the point of view of effectiveness, the involvement of the European Supervisory Authorities in all colleges of supervisors would ensure a high degree of consistency as it would gain a complete overview of all the key regulatory and market developments in the EU. From the point of view of efficiency, requiring the European Supervisory Authorities to participate in all colleges of supervisors would imply very high costs, while the advantages of such presence are not guaranteed. The most pragmatic solution therefore seems to be to leave the decisions on the participation in individual colleges up to the Authorities, as they are best placed to make consider the trade-off between effectiveness and efficiency.

**Table 3.**

Options	Assessment criteria		
	Effectiveness	Efficiency	Coherence
<b>Colleges of supervisors</b>			
1. Baseline (same powers as current Committees)	0	0	0
2. Baseline + power to participate in colleges of supervisors	+++	+++	+++
3. Baseline + 2 + requirement to participate in all colleges of supervisors	++	+	++

#### 6.1.1.4. Full supervisory powers

In May, the Commission announced the possibility of granting the European Supervisory Authorities responsibility for the supervision of entities with a Community-wide reach (such as credit rating agencies or possibly central counterparty clearing houses). The supervision of such entities involves a clear Community dimension. For example, central counter party clearing houses can process and settle operations from a large number of states and credit rating agencies based in one country can issue ratings which affect a large number of countries. Consequently, it is not optimal that a single national authority should be entrusted with the task of supervising them. From this perspective, granting this power to a European body could be more effective and coherent than sharing this competence with national supervisors. It would also be more efficient as it would concentrate the costs of supervision in only one authority avoiding any overlaps.

In this context, entities with a Community-wide reach refers to entities which by their nature can operate throughout the EU. It does not refer to cross-border financial institutions which are supervised by national supervisors operating in colleges of supervisors. A hierarchy of possibilities is thus established: for national entities supervision is totally national, for cross-border groups colleges of supervisors is key, and for entities with a Community-wide reach there is the possibility of European supervision.

It is logical to introduce the possibility of granting such powers to all three Regulations creating European Supervisory Authorities, in case it is in future decided to grant supervisory powers to the ESAs for any entities in the areas of banking or insurance and occupational pensions. Then in such cases, EU supervision could be introduced with a sectoral legislative act, without any need to amend the Regulation founding the Authority in question. However, in the short term, only Credit Rating Agencies are envisaged for the possible introduction of EU supervision. This would involve an amendment to the Regulation on Credit Rating Agencies.

**Table 4.**

Options	Assessment criteria		
	Effectiveness	Efficiency	Coherence
1. Baseline (no powers)	0	0	0
2. Full supervisory powers only for entities with a Community-wide reach	+++	+++	+++
3. Supervisory powers only for entities with a Community-wide reach shared with national supervisors	+	-	+

#### 6.1.1.5. Powers in emergency situations

From the point of view of effectiveness, the prime objective is to respond to emergency situations with highly coordinated and harmonised measures. As already noted, the European Commission will define when a emergency situation exists and the powers under discussion here can be invoked.

The fact that the responsibility for emergency management over locally incorporated and supervised entities of cross-border groups is predominantly national-based heightens the need for close EU coordination in these demanding times. Growing financial integration in the EU has fostered the development of large cross-border entities. Consequently, there must be an evolution towards a more integrated management of emergency which affect those entities. This implies information sharing and joint responses to the problems which are identified.

The first option relies solely on a higher willingness of Member States to increase cooperation after the present emergency. As mentioned earlier, one of the lessons that have been extracted from this emergency is the need for more harmonised solutions to the financial turmoil. National authorities are more aware of this problem and therefore, are expected to act in a more coordinated way in the future. However, this may seem insufficient in view of the magnitude of the problems which may occur.

There is therefore a strong case for new initiatives to increase cooperation amongst national authorities. European Supervisory Authorities would enhance coordination by ensuring a better flow of information between national authorities and also, by assisting national supervisors in the definition and correct timing of the measures to be taken. In their overarching position, the new authorities would reduce frictions between national authorities by analysing both the requests for information and the needs for action under specific circumstances in order to determine the correct line to take. This mediating role would facilitate the adoption of remedial actions and increase the swiftness and effectiveness of such measures.

As for the possibility of granting decision-making powers to the European Supervisory Authorities, it seems clear that this option would eliminate obstacles and accelerate the adoption of measures to a given problem. Certain problems like short-selling of shares for instance, require rapid and synchronised actions. In an emergency situation, these decisions have to be adopted on an EU wide basis to avoid unequal implementation of the measures and ensure their effectiveness.

In the past, emergency have revealed to which extent national interests may collide and hamper the management of the emergency. Consequently, it is coherent with the objectives set forth in the Communication to envisage a mechanism which can improve the management of the emergency by providing coordinated responses to the problems, as well as ensuring that no decision by the Authorities impinges on the fiscal responsibilities of the Member States.

**Table 5.**

Options	Assessment criteria		
	Effectiveness	Efficiency	Coherence
<b>Coordination in crisis situations</b>			
1. No powers	0	0	0
2. Coordination powers	++	++	++
3. Binding decision making powers in emergency situations	+++	+++	+++

**6.1.1.6. Powers to collect and manage micro-prudential information:**

The most appropriate option with regard to collection of information depends on the other competences and powers selected for the European Supervisory Authorities, and is the option which allows it to fulfil its functions correctly, with no more and no less information than it needs for its tasks. "Effectiveness" in this respect means effectiveness for carrying out its tasks, and "coherence" means primarily coherence with the other tasks and competences of the European Supervisory Authorities.

The European Supervisory Authorities will not be able to carry out any functions, and will therefore have zero effectiveness, without access at the minimum to the information currently received by the Level 3 committees, the anonymised and aggregated data. Without this information they will have a very limited insight into developments in their sector in Europe, limited to public sources such as the press. The issue of whether the European Supervisory Authorities should share this or any other information, with the ESRB is discussed elsewhere, in the ESRB part of this report. The baseline should therefore constitute the minimum for the European Supervisory Authorities, in terms of access to information.

Considering ad hoc information-gathering powers, the European Supervisory Authorities will not be able to exercise the powers proposed for them without relevant information. It would therefore be both effective and coherent for European Supervisory Authorities to be able to request national supervisors to provide the information needed to carry out any area of their work, including the general assessment of market developments, on the basis of a motivated request. This would certainly generate costs, but if the information is already in the possession of the national supervisory authority, the additional cost should be limited.

It should also be considered whether the European Supervisory Authorities should have the power to gather information regarding individual financial institutions which is not already in the possession of national supervisory authorities, and if so, whether they should be able to approach financial institutions directly or only via national supervisory authorities. European Supervisory Authorities may also need access to information regarding individual financial



institutions which is not in the possession of national supervisors. In such cases it will be more efficient for them to be able to obtain the information directly from financial institutions.

With regard to information for colleges of supervisors, clearly the European Supervisory Authorities will not be able to participate in colleges in any meaningful way without access to all of the information which is available for the college. More fundamentally, it has been considered above (6.1.1.3.) that European Supervisory Authorities should play a significant role with regard to colleges of supervisors, facilitating them and ensuring that all national supervisors are fully informed. This requires the European Supervisory Authorities to have a role defining and collecting information for all colleges of supervisors. This involves the management of a database of information originating from home and host supervisors for meetings of colleges of supervisors. Going beyond this, in order to ensure coherent information, the European Supervisory Authorities should lay down the minimum information which home and host supervisors should circulate prior to meetings of colleges of supervisors.

While this role regarding information for meetings of colleges of supervisors can be considered both effective and coherent, as defined above, it might be considered as not efficient, especially as it would incur high costs, particularly with regard to the maintenance of a database (the precise costs are considered below). However, centralised distribution of information for colleges of supervisors would be more efficient than the alternative, which would involve all relevant national supervisors distributing information separately to all other national supervisors attending the meeting.

**Table 6.**

<b>Options</b>	<b>Assessment criteria</b>		
<b>Information collection (general)</b>	<b>Effectiveness</b>	<b>Efficiency</b>	<b>Coherence</b>
1. Baseline (aggregated, anonymised information)	0	0	0
2. Baseline + ad hoc information gathering powers via national supervisors	++	++	++
3. Baseline + ad hoc information gathering powers directly from financial undertakings	+++	+++	++

**Table 7.**

<b>Options</b>	<b>Assessment criteria</b>		
<b>Information collection (related to colleges of supervisors)</b>	<b>Effectiveness</b>	<b>Efficiency</b>	<b>Coherence</b>
1. Baseline (no information)	0	0	0
2. Receive all information for colleges of supervisors	+	+	+
3. option 2. + management and distribution of information for colleges of supervisors	++	++	++

#### 6.1.1.7. Safeguard for fiscal responsibilities of Member States

The issue is to lay down provisions which ensure that European Supervisory Authorities do not take decisions which impinge on the financial responsibilities of Member States, without preventing European Supervisory Authorities from taking other decisions, which do not impinge on the fiscal responsibilities of Member States.

It is however of high importance to ensure that the safeguard clause is not abused by Member States. Its use should therefore be limited to well-justified cases so as to avoid disrupting the effective functioning of the Authorities. To achieve this, clarity about how and when the process can be triggered, and how it is judged, is essential.

The first and second options would be broadly similar, in that they would not provide legal clarity as to the definition of decisions which impinge on the fiscal responsibility of Member States, the procedure to be followed or the initiator of the proceedings. The third option would give Member States a wide power of appreciation and intervention regarding European Supervisory Authority decisions, and would allow them to judge when the safeguard clause applies or not, and could ultimately undermine the effectiveness of the Authority if misused. The fourth option would allow European Supervisory Authorities to adopt decisions, which Member States can challenge if they consider the safeguard clause to be triggered. Should the European Supervisory Authority not withdraw or revise its decision, the matter would be referred to the Council, which would take a decision using qualified majority voting.

A broad prohibition of taking any decisions which might, directly or indirectly, impinge on the fiscal responsibilities of Member States, could considerably reduce the scope of activity of the Authorities. On the other hand, a general and imprecise statement that European Supervisory Authorities must not impinge on the fiscal responsibilities of Member States, without specific remedial mechanisms in place in case they do so, would not protect the fiscal interests of Member States. Neither of these options would therefore be effective in achieving the desired objective.

Only a safeguard procedure could provide a rigorous framework for determining if a decision by a European Supervisory Authority could genuinely impinge on the fiscal responsibilities of Member States, with an ultimate decision being taken by the Council under QMV. Such a procedure might be considered to be burdensome, but the very length of the procedure should lead to it being used sparingly and only in cases where genuinely important fiscal issues are at stake. To balance the risk that this procedure could be overly burdensome, it may be appropriate to provide for a more expedited procedure in the case of emergency situations compared with day-to-day supervisory decisions. However, regardless of this difference, ultimately, the decision should remain subject to the Council procedure outlined above.

**Table 8.**

Options	Assessment criteria		
	Effectiveness	Efficiency	Coherence
1. Baseline (no explicit safeguard)	0	0	0
2. General safeguard clause	+	+	+
3. Member State veto over European Supervisory Authority activity	-	0	+
4. Formal safeguard procedure based on Council Decision 1999/468	++	+	+++

### 6.1.2. Organisation and structure of the Authorities in the ESFS

#### 6.1.2.1. Joint Committee of European Supervisory Authorities

A Joint Committee would play a key role in ensuring consistency of outcomes between the three authorities. Therefore, the option of having no Joint Committee would be ineffective, in that it would require the Joint Committee on Financial Conglomerates to remain in place as a relic of the old Level 3 committees and would risk divergences in approach between the three Authorities. It would also render the concept of a network-based ESFS rather empty. In terms of efficiency, it would save some travelling costs but could engender greater costs in the long term if diverging approaches between different European Supervisory Authorities require ex-post intervention in order to remedy their effects.

A Joint Committee with no legal personality could replace the JCFC, co-ordinate informally between the three European Supervisory Authorities, without being encumbered by legal requirements. Its informal nature could increase its effectiveness, it would involve no operational costs (other than mission expenses), and it could be served by staff of the ESAs. The Executive Director, the Commission and the European Systemic Risk Board (to ensure effective coordination between the ESFS and ESRB) would attend Joint Committee meetings, and other participants, at the discretion of the Joint Committee. The Joint Committee on Financial Conglomerates would in this case be replaced by a subcommittee of the Joint Committee, with broadened membership, including appropriate representatives of Member States.

Regarding the option of a Steering committee with legal personality, this option may have a positive score on effectiveness as it could adopt legal acts obliging coherent interventions by the three European Supervisory Authorities. But it is not certain that such acts would be necessary. It might be inefficient, as a Joint Committee with legal personality could engender extra costs such as for a secretariat. A possible disadvantage of a Joint Committee with legal personality is potential overlap with the three ESAs and blurring of responsibilities. On the other hand, a potential advantage of a Joint Committee with legal personality is that it could take decisions on conglomerates, removing the need for the European Banking Authority and European Insurance and Occupational Pensions Authority to take separate and identical

decisions, following co-ordination (which would be necessary with a Joint Committee with no legal personality); this could lead to a more fragmented and less coherent approach.

Overall, it is considered more prudent to have a Joint Committee with no legal personality for the moment, pending the outcome of the first review of ESFS functioning.

**Table 9.**

Options	Assessment criteria		
	Effectiveness	Efficiency	Coherence
Steering committee			
1. Baseline (no Joint Committee)	0	0	0
2. Joint Committee with no legal personality	+++	+++	+++
3. Joint Committee with legal personality	+++	++	+

**6.1.2.2. Voting procedure**

Concerning voting procedures, the baseline is QMV as applied in the level 3 committees. For the purposes of adopting proposals for binding technical standards, it would be coherent with the adoption procedures for other binding acts, to retain the use of QMV, since the role of European Supervisory Authority voting members in that case would be similar to that of Member States. The use of QMV excludes the chairman having a vote, as he will not be representative of a Member State; however there remains the question of whether the chairman should vote when simple majority voting applies.

For other matters, simple majority voting would be appropriate, as QMV is more suitable when the Authorities are adopting draft horizontal legislative and quasi-legislative acts which will apply in the whole of the EU, including guidelines and recommendations, and also for budgetary and financial matters. On the other hand, for individual acts of the Authorities concerning specific cases a simple majority voting procedure would be adequate, as such acts are implementation of Community legislation already adopted.

It should be laid down in the acts creating the ESAs that members of the Board of Supervisors must always act in the Community interest and not represent Member States. Conflicts of interest should thus be avoided. In voting in the Board of Supervisors on dispute settlement issues, the representatives of supervisors involved in the disagreement can be expected to vote in different ways, thus eliminating each other.

**Table 10.**

Options	Assessment criteria			
	Voting	Effectiveness	Efficiency	Coherence
1. Baseline (QMV on all decisions)	0	0	0	0
2. Majority voting	++	+	0	0
3. Mixed QMV and majority voting, depending on subject matter	++	+	+	++

### 6.1.2.3. Liaising with relevant stakeholders including consumers:

In terms of effectiveness, the lack of any kind of stakeholder consultation other than ad hoc public consultations can be dismissed as leading to poor quality interventions. Holding open public consultations on every act of the European Supervisory Authorities would also be inefficient. It would also be incoherent with practice in other agencies which have stakeholder consultation panels. This option can therefore be dismissed.

The option of one stakeholder group for all three European Supervisory Authorities (that is, for the ESFS as a whole) could be considered as effective and efficient, while broadly coherent with existing practice, as long as the ESFS is considered as a unity and not three totally separate Authorities. The existence of a Joint Committee underlines this unity.

Constituting separate stakeholder consultation groups for each European Supervisory Authority would however be more effective, as each group would be composed of experts on the sector in question. However, it would be less efficient, as it would be costly in terms of holding three times as many meetings and missions. It would also be coherent with practice for existing agencies, which each have their own stakeholder group. This is therefore the preferred option.

The constitution of ad hoc stakeholder groups per issue would be highly inefficient and expensive, without any guarantee of better quality input than with a permanent stakeholder group. This practice is not currently followed in any agency, and thus scores low on coherence.

**Table 11**

Options	Assessment criteria		
	Effectiveness	Efficiency	Coherence
1. Baseline (ad hoc public consultation only)	0	0	0
2. Separate stakeholder groups for each European Supervisory Authority	+++	+	+++
3. One stakeholder group for all three European Supervisory Authorities in the ESFS	++	++	++
4. Ad hoc stakeholder groups	++	-	-

### 6.1.3. Financing the Authorities in the ESFS

The total costs of creating the European Supervisory Authorities have been estimated at about 37 million Euro in the first full year of operations (2011), reaching over 68 million Euro after three years (2014) – see Table 24 in Chapter 7.3.

The cost of functioning of the new Authorities could be covered from various sources, including contributions from national supervisors, a subsidy from the Community budget, own revenues from fees and licences (this is linked with direct supervisory powers over Credit Rating Agencies and will only be relevant for the European Securities Markets Authority).

The practice adopted in the L3 Committees is that the national contributions are proportionate to the weight of the Member State concerned in the qualified majority voting arrangements in the Council. This system could be maintained in the European Supervisory Authorities, or an alternative system of allocation, for example, based on relative Gross National Income, could be used. Since their own revenues (i.e. from fees and licences) are expected to be of marginal importance, at least in the first stages of operation, the funding will basically have to come from national contributions and the Community subsidy. There is a full spectrum of possibilities for sharing the costs between these two main sources. Some illustrative options are presented in Table 12 below.

**Table 12. Illustrative options for European Supervisory Authorities' funding**

In thousands €

			2011	2012	2013	2014
<b>Total costs for EU and MS</b>			<b>37.263</b>	<b>51.268</b>	<b>60.639</b>	<b>68.426</b>
<b>Option 1</b> (the baseline)	National contributions	100%	37.263	51.268	60.639	68.426
	Community subsidy	0%	0	0	0	0
<b>Option 2 (a)</b>	National contributions	80%	29.810	41.015	48.511	54.741
	Community subsidy	20%	7.453	10.254	12.128	13.685
<b>Option 2 (b)</b>	National contributions	60%	22.358	30.761	36.384	41.056
	Community subsidy	40%	14.905	20.507	24.256	27.370

<b>Option 2 (c)</b>	National contributions	50%	18.631	25.634	30.320	34.213
	<b>Community subsidy</b>	<b>50%</b>	<b>18.631</b>	<b>25.634</b>	<b>30.320</b>	<b>34.213</b>
<b>Option 2 (d)</b>	National contributions	40%	14.905	20.507	24.256	27.370
	<b>Community subsidy</b>	<b>60%</b>	<b>22.358</b>	<b>30.761</b>	<b>36.384</b>	<b>41.056</b>
<b>Option 2 (e)</b>	National contributions	20%	7.453	10.254	12.128	13.685
	<b>Community subsidy</b>	<b>80%</b>	<b>29.810</b>	<b>41.015</b>	<b>48.511</b>	<b>54.741</b>
<b>Option 3</b>	National contributions	0%	0	0	0	0
	<b>Community subsidy</b>	<b>100%</b>	<b>37.263</b>	<b>51.268</b>	<b>60.639</b>	<b>68.426</b>

Source: Commission calculations

As regards Option 1 – the baseline – one common argument raised in favour of 100% Member State financing is the need to ensure independence of the new Authorities from excessive influence of European institutions. However, experience with existing EU regulatory agencies, which are mostly fully funded through the EU budget, suggests that they enjoy a significant degree of independence. The arguments that the EU subsidy would compromise the independence of the new Authorities therefore does not seem to be substantiated.

100% funding from the Member States on one hand would not entail any additional expense from the Community budget. But on the other hand, it would have as a consequence that the EU Financial Regulation would not apply and there would be no automatic requirement for Parliamentary discharge for the budget<sup>9</sup>. This could be perceived as reducing controls and increasing risk. Finally, the exclusive national financing would be incoherent with the EU principle of solidarity and the level playing field in the Internal Market. National supervisors use a variety of funding models at national level - some from general taxation, some from levies on the industry. Thus the costs linked with financing the ESAs would have to be passed directly on to the industry or indirectly to the taxpayers. Given unequal sizes and levels of development of financial sectors in various MS, the contributions to the ESAs calculated according to the weights in the Council voting mechanism could be contested by some countries. Opposition could be expected especially from the Member States with relatively small financial sectors as compared to the number of their QMV votes, especially in the context of budgetary strain in the post-crisis period.

The Option 2 and 3, i.e. the Community financing in part or in full, implies the application of the Financial Regulation, with all the checks and controls it involves. This would guarantee the transparency of the ESAs' internal financial procedures and support their accountability. They would be subject to oversight by the established Community framework for financial audit and control. This would help to protect the ESAs from fraud or any kind of fraudfinancial abuse.

The need for Community funding is also particularly important to ensure that the Authorities are truly independent from Member States. The choice has been made, in order to limit as much as possible interferences in the technical work of supervisors, to limit the Commission's participation to the minimum in the supervisory boards of the Authorities (with one non-voting member) and the management boards (with one voting member). If there were to be in addition an excessive reliance on Member States' contributions, the credibility of the Authorities' independence would be seriously put at risk. A significant Community

<sup>9</sup> The Parliament could, however, establish itself as a discharge authority.

contribution is needed to compensate for the limited role which is being given to the Commission in the decision-making bodies of the Authorities;

Besides, experience with the existing EU agencies shows that the Community financing guarantees the stability of revenues. In case of mixed funding arrangements (for agencies with some own revenues), the Community subsidy usually tops up other types of revenues to ensure the necessary budget for conducting the statutory operations. Such a solution could also be foreseen in the case of a mixed financing with contributions from national supervisors. Excluding Community financing completely to rely on national contributions would entail the risk of budgetary problems in case one or several Member State(s) for whatever reason fail(s) to contribute.

In light of the above arguments, it seems that the involvement of the Community in financing of the ESAs would be beneficial in comparison to the baseline, i.e. financing exclusively by the Member States. It could contribute positively to the **effectiveness** of the new Authorities by ensuring their stable financing and thus operations while not endangering their independence. At the same time, the application of EU financial control and audit mechanisms is likely to enhance the ESA’s **efficiency**. Funding or co-funding from the Community budget also seems to be in all ways more **coherent** with other EU objectives and policies than 100% Member State financing. On the other hand, full funding of the ESAs from the Community budget is not coherent with the appropriations planned in the 2007-2013 financial perspective.

**Table 13.**

Options	Assessment criteria		
	Effectiveness	Efficiency	Coherence
1. Baseline: 100% funding by MS	0	0	0
2. Mixed funding by MS and EC (60% - 40%)	++	++	++
3. 100% funding by EC	++	++	+

Within the Option 2, a Sub-option 2b whereby it is proposed that the Community budget funds 40% of the costs and Member States fund the 60% is suggested as the optimal solution. The reasons for this choice are the following:

- a well-balanced financing is the best way to ensure that the Authorities act (and are perceived to be acting) independently of Member States and of the Community institutions. If one particular source of funding were to be overly dominant, this could cast a shadow on the credibility of the decisions made by the Authorities and thus undermine the new framework proposed to safeguard financial stability;
- given that national supervisors will continue, in this new framework, to carry out the bulk of supervisory activities on the ground, it seems appropriate to reflect this in a slightly higher contribution from Member States. In doing so, allowance should be made for a smooth evolution from the present situation where the level 3 committees are almost exclusively funded by Member States;



- however, it is of the essence that a significant part of the funding comes from the Community budget. Indeed, the new Authorities will serve objectives which have a clear Community dimension: preserving financial stability in the Internal Market as well as sustainable growth in the EU. Moreover, one of the Authorities' core tasks and powers is to ensure a consistent, efficient and effective application of Community rules in the sector. This justifies, at least, a 40% funding from the Community budget (as most of these entities are normally fully funded through the Community budget). Furthermore, one can doubt whether all Member States will be able to cope with the sharp increase in their contributions that would be required under the new framework, which will be much more costly than the present level 3 arrangements;
- this approach is the most conducive to stable funding, with no over-reliance on one source or on contributions from big Member States who could threaten the continued operation of the Authorities by putting an end to their financial contributions. Finally, this approach is also more fair than a full or very large funding from Member States.

## 6.2. ESRB

### 6.2.1 Powers and competences of the ESRB

#### 6.2.1.1. Follow up mechanism to warnings and recommendations

One of the specific objectives outlined above was to "ensure follow up to warnings and recommendations". The purpose of ESRB warnings and recommendations is to bring potential systemic risks to the attention of recipients. However, unlike policies such as inflation targeting, there is no quantitative target in the field of systemic risks. Therefore any warning or recommendation is likely to contain some uncertainties and elements of subjectivity. On the other hand, with risks of this type, the earlier action is taken to mitigate them, the more likely the cost of such action and the probability of the risk materialising will be minimised. Therefore it is important to strike a balance between incentivising early action and not prescribing actions in the face of uncertainty.

The first option, no follow-up mechanism, would significantly lessen the effectiveness of ESRB warnings and recommendations. There would be a high risk that addressees may not heed the ESRB warnings and recommendations, which would be exacerbated if ESRB acts were not made public (discussed under 6.2.1.4). However, granting binding powers to the ESRB to require compliance from addressees would probably be a too rigid and too simplistic option and could lead to legal challenges. The purpose of the ESRB should be to raise awareness among Member States, the ESAs or national supervisory authorities on potentially unsound financial developments and initiate an early constructive dialogue with addressees on possible ways to react. A "comply or explain" mechanism seems therefore to be the best option in terms of effectiveness as it leaves to the addressees sufficient flexibility to adjust while it ensures there is follow up (as specified in the specific objectives) by requesting them to react (complying or explaining) within a specific timeline.

In addition, it could be envisaged that ESRB recommendations, as well as the responses of the addressees, are transmitted to the Council and, where relevant, to the ESAs. This mechanism would help to better co-ordinate the responses in the case of multiple addressees. The ESAs in particular should use their powers to ensure timely follow-up to recommendations addressed

to one or more competent national supervisory authorities. This role would contribute to ensure a smoother interaction of supervision at macro-prudential and micro-prudential levels, which would be fully in line with the system-wide specific objectives. If the ESRB judges that its recommendation has not been properly addressed and is not satisfied with the addressee's explanation, it would inform the Council and, where appropriate, the ESAs. Such a prospect should help put pressure on the addressees and would certainly help achieving effective follow-up to warnings and recommendations, as mentioned in the specific objectives.

**Table 14.**

Options	Assessment criteria		
	Effectiveness	Efficiency	Coherence
1. Baseline (no follow-up mechanism)	0	0	0
2. Comply	++	-	--
3. Comply or explain	++	+	++

**6.2.1.2. Information access**

The ESRB needs sufficient information to effectively identify macro-prudential risks and to analyse the interconnection with the soundness of individual financial institutions. Provision of such information should not place undue burdens on national supervisors or financial institutions. To deliver this objective, the ESRB is likely to need access to a wide range of information on financial institutions and the financial sector. It would not be possible to issue credible warnings and recommendations without such access to accurate and up-to date information. However, gaining this information should be as efficient as possible. In order to alleviate the burden on the reporting entities, the ESRB could potentially have access within existing reporting arrangements, channelled through the ESAs. Such an arrangement would have the merit of having no impact in terms of additional reporting burden on financial institutions. The channelling of information through the ESAs is also a way of enhancing cooperation between the macro- and the micro- European supervisor, thus contributing to meeting the system-wide objective, as described above.

Being responsible for identifying macro-prudential risks, the ESRB would analyse primarily aggregated data at the EU or country level. Yet individual institutions can present a systemic risk because of their size, their activities or their cross-border nature. Allowing the ESRB to access -under specific circumstances and on reasoned request- individual data would improve its effectiveness and be necessary for it to achieving its objectives. The information on individual data could be collected by the ESRB Secretariat and codified for the discussions at Board level. Such a solution would have the advantage not to rule out discussions on individual cases as a single financial institution may put financial stability (in one or more Member States) at threat and preserve the confidentiality of the data at the same time. Before a request for data is made, the ESRB would first take account of the existing statistics produced, disseminated and developed by both the European Statistical System and the ESCB and then could consult the relevant European Supervisory Authority, in order to ensure that the request is proportionate.

**Table 16**

Options	Assessment criteria		
	Effectiveness	Efficiency	Coherence
1. Baseline (no access)	0	0	0
2. Collection of aggregated data on a regular basis	++	++	++
3. Collection of aggregated data on a regular basis + access to information on individual institutions upon request	+++	++	++

### 6.2.1.3. Degree of publicity of warnings

It will be important to ensure appropriate follow up to warnings and recommendations. One tool to achieve this is through the threat, or the act, of publicising warnings and recommendations. However, there is a need to strike a balance between preserving the confidentiality of certain decisions so as not to create excessive concerns on the markets and ensuring the effectiveness of ESRB action by releasing some decisions to raise awareness and enhance market discipline. If the ESRB is only a silent body, its image among market participants as well as with the general public would be limited which may undermine the credibility of its warnings. On the contrary, it would not be effective to require all warnings and recommendations to be published as the publicity of such sensitive decisions in itself could destabilise the financial system. Pre-defined rules on whether a decision should be made public would give the Board and market participants clear guidance and create an incentive for the recipient to demonstrate that they have addressed the issue. But it could also potentially tie the hands of the Board too much and result in instances of publication when it was not appropriate and/or non-publication would not have been appropriate. It would be more effective and efficient to entrust the Board to decide whether a warning/recommendation should be made public. Given the importance of the decision, a qualified majority of two thirds of the votes within the General Board could be foreseen to decide on making a warning/recommendation public. When the decision has been made not to make a warning/recommendation public, the addressees, the Council and the ESAs should adopt all necessary measures to preserve the confidentiality of the decision. More specifically, the President of the Council could be entitled to decide not to circulate a warning or recommendation to the other members of the Council.

**Table 17.**

Options	Assessment criteria		
	Effectiveness	Efficiency	Coherence
1. No publicity (baseline)	0	0	0
2. All decisions published	-	-	0
3. Publication according to general principles agreed in advance	+	-	0
4. Publication to be decided on a case by case basis (as part of the follow-up mechanism)	++	+	0

## 6.2.2 Organisation and structure of the ESRB

### 6.2.2.1. Size and scope of expertise of the board

The composition of the board is a key issue for the effectiveness of the new body. It will be necessary to have a board which strikes the right balance between ensuring adequate representation of expertise and views, to ensure there is adequate pooling of information about macroeconomic risks for financial stability, while at the same time ensuring it is flexible enough to be able to issue warnings and recommendations effectively and ensuring its size is not a limitation to this effectiveness. The Commission proposal endorsed by the European Council suggests a board comprising:

- The President and Vice President of the European Central Bank (2, voting)
- Governors of each of the EU's National Central Banks (27, voting)
- One representative of the European Commission (1, voting)
- Representatives of each of the European Supervisory Authorities (3, voting)
- One supervisory representative from each Member State (27, non voting)
- One representative from the EFC (1, non voting)

The composition in terms of specific individuals or bodies is ultimately a political decision. There is, however, an important judgement to make around how to ensure the composition of the board balances the two key parameters outlined above: ensuring an effective size, and ensuring balanced representation. The composition of the board should also contribute to the objective of independence of the macro-supervisor, as mentioned in the specific objectives.

There are four types of possible members (central banks, supervisors, independent individuals/bodies and community institutions) in two possible formulae – with and without votes. Having less voting members than total members will increase the efficiency of the Board at deciding on warnings and recommendations for a given size, while on the other hand, warnings and recommendations will necessarily represent the views of only that smaller group of voting members.

In terms of the types of possible members, to ensure adequate pooling of information about macroeconomic risks, it seems essential to ensure a significant coverage of central banks. In most Member States, central banks are primarily responsible for maintaining price stability (and therefore wider macroeconomic stability) through the use of monetary policy, the conduct of foreign exchange operations, managing the national official reserves. Moreover central banks undertake the macro-prudential oversight at national level and are therefore used to looking at both financial and the wider macroeconomic stability. Thus Central Bank members will be in a good position to take an overview of the linkages between developments in the financial sector and the macroeconomic performance of EU economic systems. In addition, National Central Banks are independent bodies and their independence is safeguarded by the Treaty. Having a large majority of Central Banks in the Board would therefore contribute to the objective of independence mentioned above. For all these reasons, it seems sensible to ensure that all relevant Central Banks have a prominent place on the ESRB.

Supervisors, on the other hand, are responsible primarily for the regulation of financial institutions, with the broad objectives of protecting depositors and reducing the likelihood and impact of financial institution failure. They will have the necessary information and skills to make judgements about the solvency of individual financial institutions. It seems sensible to have as wide a representation as possible given the objective of the ESRB to ensure the link between macro-prudential and microprudential issues and to ensure that the ESFS functions are carried out effectively in terms of information flows and informed actions. The participation of the ESAs in the board will definitely contribute to fulfilling the system-wide objective of close cooperation between the macro-and the micro- European supervisor.

The Commission, in its macroeconomic monitoring and legislative roles, and Member States in their political role should also be represented. However, it is not necessary to have a wide representation. Therefore it seems sensible to limit their representation to only one seat.

The involvement of other independent individuals should also be considered. Academics or independent experts may have highly relevant and informed assessments and opinions which could usefully shape the ESRB's thinking. However, as discussed under the assessment of the options relating to access to information, it is likely that the ESRB will be dealing with sensitive information in developing warnings and recommendations. Therefore involving individuals from outside of the institutional and regulatory framework may prove difficult. Additionally, it is unlikely that a single academic or independent expert would be sufficient for all potential situations. Therefore, as an alternative, it could be made possible for the ESRB to consult relevant experts and academics as appropriate (see section on 'stakeholders involvement').

With the membership options outlined above, the ESRB will be a relatively large grouping. The optimal size for a group of this type will depend among other things on the relative likelihood of diverging opinions, the specific individual relationships involved, the strength of the chair and the effectiveness of the steering group. However, one way to increase the effectiveness of decision making is to limit the voting members for a given size. In the proposal above around half of the members are voting members, including the national central banks, the Commission and the European Supervisory Authorities. This should help to streamline decision making. It should also help to minimise potential conflicts of interest, given the bulk of ESRB warnings and recommendations may go to Member States or National Supervisors.

**Table 18.**

Options	Assessment criteria		
	Effectiveness	Efficiency	Coherence
<b>Size and scope of Board</b>			
1. Baseline (fragmented supervision)	0	0	0
2. Central Banks	++	+++	+
3. Supervisors	+	+++	+
4. Central Banks + Supervisors + EFC + ESAs	++++	++	+
5. Independent Authorities	+	+	+

### 6.2.2.2 . Addressees of warnings

One of the specific objectives of the ESRB is to 'issue warnings to the relevant actors and recommend the appropriate actions'. This is closely linked to the scope of warnings and recommendations, discussed previously. It is not possible to specify in advance an appropriate scope for potential warnings and recommendations. It is however possible to identify those who might be responsible for taking appropriate policy or supervisory action. At the EU level, for example, this would include the new European Supervisory Authorities, which will be responsible for, among other things, developing technical standards, ensuring compliance among national supervisors with appropriate community law and eventually direct supervision of some EU wide institutions, notably Credit rating Agencies. It is also likely to include the Commission, which is responsible for financial services legislation and ensuring a level playing field between Member States. However, coverage limited to institutions at the European level would not cover the full range of possible policy responses (in particular if recommendations related to policy action regarding one or more individual financial institutions), and, in particular, would not include the policy tools held by Member States and national supervisors. Therefore it would be ineffective and inefficient to limit the scope of potential addressees. For example, targeting the national competent authorities might also be too narrow and not appropriate in some cases (for example, when an inaccurate fiscal policy is the potential source of market bubbles). To conclude, it seems that the most effective option to meet the objectives of the ESRB would be a range of addressees (Member States, competent national supervisory authorities, European Supervisory Authorities and the Commission). It is worth noting that some of the potential addressees of ESRB recommendations (ESAs, competent national supervisory authorities, the Commission) are represented on the board, which could be an issue as regards the independence of the ESRB. This said, the large majority of the board members will be central bankers. Representatives of national supervisory authorities would be non-voting members. An additional safeguard clause to protect the independence of the ESRB would require the members of the board to perform their duties impartially, only bearing in mind the objective of financial stability in the European Union. This would be a specific provision in the Regulation establishing the ESRB.

To minimise the cost burden and ensure an efficient approach it seems unnecessary to include individual financial institutions within the scope of warnings and recommendations. Whilst in some cases they may be the source of systemic risks due to their size, interconnections and complexity, ultimately, responsibility for supervision and regulation lies with Member States.

**Table 19**

Options	Assessment criteria		
	Effectiveness	Efficiency	Coherence
1. Baseline	0	0	0
2. MS only	+	++	++
3. Supranational Authorities (ESAs and Commission only)	+	++	++
4. Competent Authorities in MS	+	+	++
5. Competent Authorities + individual institutions	+	+	++
6. MS, ESAs, national supervisors and	+++	+	++

### 6.2.2.3. Stakeholder involvement and other Advisory Bodies

The assessment of the options in this section will be done in respect to the first three specific objectives above since both the objectives of ensuring adequate follow-up to the warnings/recommendation and of liaising effectively with international organizations seem to be less affected.

The baseline scenario is no stakeholder consultation. However, given the mandate of the ESRB and the potential wide impact of its initiatives (although it will not have binding powers), an adequate level of consultation of the main stakeholders would be essential. Therefore this option can be immediately dismissed. In the light of the wide competence of the Body it would be appropriate to increase the potential sources of advice particularly for the most complex analysis. In this respect, limiting the analytical support to that provided by the Secretariat only would appear inappropriate in terms of effectiveness.

As regards public consultation, while a total absence of any consultation would negatively impact on the quality of the analysis done by the ESRB, an involvement of the relevant stakeholders via public consultations would present quite limited benefits in terms of effectiveness. Indeed, a public consultation (especially if referred to future possible warnings and recommendations) would be not consistent with the need of preserving the confidentiality of certain ESRB analysis and preventing the spread of excessive/unjustified concerns in the markets. Moreover, such a modality might result in excessive delays for the ESRB initiatives and could determine a rather limited or exceptional recourse to it. In terms of efficiency this modality would be quite burdensome for the ESRB in relation to the costs for collecting and analysing for each consultation the reactions of an undetermined number of stakeholders.

The establishment of a permanent stakeholder group (including industry, consumers and workers representatives as well as academics) would represent, as far as the effectiveness is concerned, a better solution in comparison with the previous one, in particular with regard to the need of preserving an adequate level of confidentiality and velocity of the process. Moreover, dialogues with the relevant stakeholders carried out in structured way would increase over the time their capacity in dealing with the issues discussed by the ESRB and in managing their relationship with the Body. In terms of efficiency, the consultation of a restricted group of people would imply by lower costs than public consultations. Nevertheless, according to the broad mandate of the ESRB and the number of issues to be monitored, it seems that a certain degree of flexibility should be granted to the ESRB in dealing with the relevant stakeholders. Therefore it should be up to the Board to decide on an ad hoc basis, according to the issues at stake, on the appropriateness of a consultation and on which categories of stakeholders should be consulted. In the end, with respect to both effectiveness and efficiency, this solution seems to be the best one, ensuring a good balance between preserving the confidentiality of the process leading to certain ESRB initiatives and the need of enriching the analysis with as many perspectives as possible.

In addition to this, a Technical Advisory Committee, putting together experts from the different institutions participating to the ESRB would appear as a really useful tool to refine the analysis of the Secretariat when appropriate. It would intervene exclusively on request by the ESRB and could be used to advise on certain complex issues of cross-sectoral nature or requiring a more substantial involvement of the micro-prudential supervisors and/or the Commission in the preparatory stage. As regards the efficiency criterion the (limited)

recurrence of the Committee activation and the fact that it would basically build on the existing BSC would mean quite limited costs of its functioning.

**Table 20**

Options	Assessment criteria		
	Effectiveness	Efficiency	Coherence
1. Baseline (no stakeholder involvement)	0	0	0
2. Public Consultation only	++	+	+
3. Through a stakeholders group	+++	++	+
4. Ad hoc consultation of stakeholders and a Technical Advisory Group	++++	+++	+

### 6.2.3. Financing of the ESRB: the Secretariat

The assessment will be carried out in relation to the functions to be fulfilled by the secretariat i.e. the provision of administrative, logistical, statistical and analytical support to the ESRB. The analysis of the impact of the various options, including that regarding the cost-efficiency criterion, will be undertaken in qualitative terms only. This is due to the fact that it has been not possible at this stage to obtain sufficient elements to envisage the likely practical arrangements and the division of work between the Secretariat (particularly for options 1 and 2) and national central banks and supervisory authorities. This has made it impossible to clearly identify, i.a., the staffing needs for the different options and the set-up costs, including those for IT equipment (where appropriate). For the favoured option, i.e. the provision of the secretariat by the ECB, it has not been possible to evaluate the impact on the ECB's budget as the latter does not envisage setting up a dedicated structure but would rather leverage the staff, resources and expertise of various departments in the ECB, depending on the issues to be analysed. It was therefore not possible to determine upfront e.g. the number of full-time equivalent staff which would work in relation to the ESRB. The cost of the option could consequently not be assessed.

As regards the criterion of coherence, all options, by providing support for the functioning of the ESRB, are consistent with the overall objectives of the EU: to contribute to economic growth and job creation, to foster the Single Market and to promote the competitiveness of EU enterprises. The establishment of the ESRB will contribute to safeguarding financial stability, to a smooth functioning of the Internal Market and to ensuring a sustainable contribution of the financial sector to the economic growth.

The following options have been assessed:

1. Provision by the **ECB**. In terms of **effectiveness**, giving the European Central Bank the role of providing the Secretariat to the ESRB would mean it was possible to leverage the ECB's in-depth macro-prudential expertise and its central role in the EU monetary system. In cooperation with the National Central Banks, the European Central Bank compiles and disseminates a wide range of monetary statistics and indicators regarding MFIs and financial institutions outside the MFIs.

Moreover, the European Central Bank, together with the Eurosystem, systematically monitors cyclical and structural developments in the euro-area/EU banking sector and



in other financial sectors to assess the possible vulnerabilities in the financial sector, and its resilience to potential shocks. As regards external relations, the European Central Bank maintains working relations with relevant institutions, bodies and for a, both within the EU and internationally in respect of tasks entrusted to the Eurosystem. A secretariat provided by the European Central Bank could make it possible to benefit from the ECB's resources in terms of expertise, infrastructure and networking with information sources already available within the Institution. A secretariat integrated in the European Central Bank would also be best placed to align working methods and analytical tools and to harmonise data originated by different sources.

As a possible drawback, giving such a prominent role to the European Central Bank could potentially create a deficit of coverage among the non-euro area financial markets. Any structure will need to ensure the close involvement of a broad range of EU Central Banks.

Having regard to the **cost-efficiency** criterion, the establishment of the Secretariat in the ECB would allow for maximizing the synergies with the existing structures within the European Central Bank and the ESRB, relating to the financial stability and other tasks, including the network of national central banks and supervisory authorities. This would be particularly true as regards the human resources and the IT infrastructure. Therefore, the costs linked to implementation of this option would be somewhat limited and the Secretariat could be fully operational in a relatively short time frame.

2. **Commission provision.** This option could entail positive outcomes in terms of effectiveness as a Commission Secretariat would have a wide natural coverage. Moreover, the Secretariat could build on the analysis and infrastructure in place (particularly in DG ECFIN) to support Commission tasks in respect to the macro-economic surveillance.

On the other hand, it can be argued that it would make sense to give central banks a leading role in doing the preparatory work for the ESRB functioning since the two main objectives of central banks relate to the maintenance of monetary and financial stability. Identifying vulnerabilities in the financial and non-financial sectors and potential shocks in these markets is therefore a vital part of the work of central banks. In this respect, the Commission structures would lack adequate expertise and experience in undertaking the analysis to detect systemic risks stemming from the interconnections between the real economy and the financial system. Also in terms of technical capacity to process and analyse a huge amount of data, particularly on financial markets and institutions, the Commission would lack adequate resources according to its current structure and tasks. A similar reasoning can be applied to the need of establishing from scratch effective connections with Central Banks and other information sources. This could in turn result in delays as far as the time needed to set-up the structure, to adequately staff and equip it and to be fully operational (and to get an adequate level of reputation).

As regards cost-effectiveness, part of the staff needed could be re-allocated from Commission Structures and the remaining staff (particularly the most technical and analytical tasks) could be composed of Seconded National Experts and externally recruited staff. As regards the set-up costs, it can be argued that more substantial costs (in comparison to the other options) could be incurred, in particular as regards the upgrade of the IT infrastructure.

3. **Virtual Network of Central Banks.** This option would probably grant the highest degree of coverage and support from all Central Banks in carrying out the collection of the data and undertaking the analytical work. In terms of effectiveness, one should also refer to the positive aspects already illustrated under option A related to the wide expertise of Central Banks in monitoring vulnerabilities in the financial and non-financial sectors and safeguarding financial stability.

Nevertheless, the **effectiveness** of such a model would be seriously hampered by the complexity of its management and lack of independence. Indeed, without an adequately dimensioned and strong central Secretariat (like in the other options), coordination of working methods and analytical tools and harmonisation of data used to feed the analysis may prove difficult. It would also require extensive work to identify role and responsibilities among members and to avoid potential duplications of work. This would be particularly relevant with regard to the collection of micro-prudential information and in the liaison with the support structures of other international institutional dealing with financial stability issues (or third countries). Any possible disagreements in carrying out the preparatory work for the ESRB could be quite difficult to be quickly sorted out and result in serious obstructions to the functioning of the network.

As regards the **cost-efficiency** criterion, the set-up of such framework would imply rather limited costs since it would build on existing structures within the European Central Bank and the National Central Banks.

On balance, provision by the European Central Bank emerges clearly as the most beneficial option. As regards the effectiveness the European Central Bank would be best placed, due to specific functions fulfilled within the ESCB, to deal with the broad set of relevant macro-economic and micro-financial data and indicators needed for the preparatory work for the ESRB meetings. Moreover, it could fully exploit the well established networking with other National Central Banks and EU supervisors. Also in respect to the efficiency criterion, the European Central Bank option outperforms the remaining solutions as it would maximize the synergies with existing structures in relation to the pursue of task in the field of monetary policy and financial stability. The existing connections with National Central Banks and Supervisory Authorities would contribute to limit start-up costs and delays in having the structure fully operational.

**Table 21**

Options	Assessment criteria		
	Effectiveness	Efficiency	Coherence
1. Baseline Scenario (current fragmented arrangements)	0	0	0
2. European Central Bank	+++	+++	+++
3. Commission	++	++	+++
4. Virtual network of Central Banks	+	+	+++

## 7. Impact of the selected options

### 7.1. The set of selected options

The tables below relate the selected options to each of the operational objectives of the ESFS and the ESRB.

**Table 22. Options selected for the European System of Financial Supervisors**

<b>EUROPEAN SUPERVISORY AUTHORITIES</b>	
<b>POWERS</b>	
<b>Operational objective</b>	<b>Selected option</b>
Define powers to ensure a single set of harmonised rules	Issuing (1) non-binding standards and recommendations and (2) proposals to the Commission for binding standards [Option 2]
Define powers to bring about consistent application of EU rules	Mediation between supervisors regarding consistent application of EU rules; binding decision-making in case of disagreements between supervisors; warning of manifest breaches of EU law [Option 4]
Ensure a common supervisory culture and consistent supervisory practices	Tasks of the 3L3 Committees plus participation in relevant colleges of supervisors, and a facilitation task for colleges in general [Option 2]
Ensure full supervisory powers	Full supervisory powers for entities with a Community-wide reach [Option 2]
Define powers in crisis situations	Coordination powers plus binding decision making powers in emergency situations [Option 3]
Grant necessary powers to collect and manage micro-prudential information	Collecting aggregated, anonymised information plus ad hoc information gathering powers directly from financial undertakings [Option 3]. Receiving all information for colleges of supervisors and managing and distributing the information [Option 3].
Define safeguards to avoid impact on MS fiscal responsibilities	Formal safeguard procedure with ultimate Council decision [Option 4]
<b>GOVERNANCE</b>	
<b>Operational objective</b>	<b>Selected option</b>
Define roles, powers and legal status for the Joint Committee	Steering committee with no legal personality [Option 2]
Set up effective voting procedures	Mixed QMV and majority voting, depending on subject matter [Option 3]
Define effective channels of contact with stakeholders	Separate stakeholder groups for each ESA [Option 2]
<b>FUNDING</b>	
<b>Operational objective</b>	<b>Selected option</b>
Design optimal funding structure as to the sources of funding	Mixed financing by MS (60%) and Community budget (40%) [option 2 b]

**Table 23. Options selected for the European Systemic Risk Board**

<b>EUROPEAN SYSTEMIC RISK BOARD</b>	
<b>POWERS</b>	
<b>Operational objective</b>	<b>Selected option</b>
Define effective powers of follow-up to warnings	“Comply or explain” mechanism [option 2]
Define effective scope of warnings	General/unlimited scope [option 1]
Define adequate access to information	Collection of aggregated data on a regular basis + access to necessary information on individual institutions upon request [option 3]
Ensure optimal degree of publicity of warnings	Board to decide on a case-by-case basis [option 5]
<b>GOVERNANCE</b>	
<b>Operational objective</b>	<b>Selected option</b>
Define the size of the Board and the scope of expertise	Central Banks + Supervisors + EFC + ESAs [option 4]
Define addressees that ensure the effectiveness of warnings	MS, ESAs, national supervisors, and Commission [option 6]
Ensure an effective involvement of stakeholders	Stakeholder Group and a Advisory Technical Group [options 3 and 5]
<b>FUNDING</b>	
<b>Operational objective</b>	<b>Selected option</b>
Define the optimal set-up for the Secretariat of ESRB	European Central Bank to provide secretariat [option 2]

## 7.2. Impact on stakeholders

The first Impact Assessment analysed the impacts of the creation of the European System of Financial Supervisors and the European Systemic Risk Council on various stakeholder groups. These general, largely beneficial impacts were presented in the table which is included in annex 2 to this report.

In the present Impact Assessment we can consider more specific impacts on various entities more directly concerned by the establishment of the ESRB and ESFS. These impacts are linked with the specific powers and the governance structures of the new European Supervisory Authorities and the European Systemic Risk Board. The concerned institutions include the national supervisors, the national finance ministries, the existing Level 3 and Level 2 committees, the European Central Bank and the national central banks. Although the impact on financial companies identified in the first IA remains valid, we can now also distinguish specific impacts on financial conglomerates and credit rating agencies. Finally, the new system for financial supervision will also involve other stakeholders, such as consumers and employees of companies in the financial services sector.

### *National supervisors*

The European System of Financial Supervisors has been designed to ensure effective harmonisation of financial supervision in the EU. This will be accomplished through the new

Authorities' powers to propose binding standards and adopt binding decisions in case of disagreements between supervisors on application of EU rules. In addition, application of EU rules by national supervisors will be monitored on a constant basis. In case of manifest breaches of the Community law, the European Supervisory Authorities will issue relevant warnings. The ESAs activities will contribute to achieving supervisory level playing field across the Single Market.

The European Supervisory Authorities will also facilitate functioning of the colleges of supervisors, which will continue to play a pivotal role in supervision of large European financial groups. The ESAs' representatives will have the right to participate in the meetings of such colleges, with the power to mediate and settle disputes with a binding effect. The ESAs will also run central databases for banking, insurance and securities sectors, the development of which will be a paramount undertaking. The members of the colleges will benefit from access to the supervisory data and information aggregated in these databases. The information may also be made available to the European Systemic Risk Board.

To support cross-border cooperation and strengthen the European perspective on supervisory challenges the European Supervisory Authorities will organise trainings for national supervisors as well as staff exchanges and secondments. This will contribute to enhancing supervisory skills and development of new competences of national supervisors.

An important element of the ESFS will be a possibility for national supervisors (as well as for supervised companies) to bring appeals against decisions taken by the European Supervisory Authorities. For each Authority an independent Board of Appeals will be established, composed of six individuals with expertise in the concerned sector.

Most national supervisors will have to contribute their share to finance the European Supervisory Authorities, according to the agreed funding arrangements.

The creation of the ESRB should help national supervisors to better understand the impact of their actions on the wider economic and financial system. It should also help to draw together an understanding of risks building across the whole of Europe and a more coordinated consideration of how to mitigate those risks. National supervisors might have a greater burden in terms of information provision and a requirement to 'act or explain' following the receipt of a recommendation, however, this will be minimised as much as possible by channelling information requests and recommendations through the European Supervisory Authorities where this is possible and appropriate.

### ***National Finance Ministries***

The ministers of finance in the Member States will benefit from the positive impacts of enhanced financial stability across the EU: better business environment, enhanced consumer confidence and more investment attracted from 3<sup>rd</sup> countries – all contributing to higher economic growth. The Ministries will have access to the analyses of systemic risks carried out by the European Systemic Risk Board and will receive warnings and recommendations if necessary. This will allow the governments to drive their economies towards a more secure macro-economic environment.

As experienced in the recent financial crisis, solvency problems of financial institutions often entail government interventions and bail outs. The European System of Financial Supervisors will include safeguards that any decisions taken by the European Supervisory Authority cannot impinge on the fiscal responsibility of any given Member State. National authorities will have the right to refuse to follow decisions taken by European Supervisory Authorities in justified cases.

While it is true that depending on the Member State, the Treasuries may have to contribute their share to finance the European Supervisory Authorities, according to the agreed funding arrangements, on the other hand the improved level of financial supervision may well save taxpayers' money in the Member States by leading to action which prevents the necessity of bank bail-outs..

### ***Level 3 and Level 2 Committees***

With establishment of the European Supervisory Authorities, the Level 3 committees: CEBS, CEIOPS and CESR, will cease to exist and their functions will be fully taken over by the ESFS. However, the new Authorities will as much as possible ensure continuity with the Level 3 committees work and will draw on their experience. As for the location of the new Authorities, it is proposed to maintain the present place of residence of the existing European committees of supervisors (i.e. Frankfurt, London and Paris), as this allows for a fast and effective transition to the new regime. For the transformation of the existing committees into effective Authorities enhanced resources are needed- both personnel and budgetary. The status of the staff will change once the Authorities adopt the Staff Regulation of the European institutions. The Authorities will have to adjust their budgetary procedures to the Financial Regulation of the Communities. They will, for example, no longer be allowed to receive grants from the Commission – this will be replaced by direct subsidies from the Community budget.

The Level 2 committees: the EBC, EIOPC and ESC will continue their work in the current format, serving as the Commission's comitology committees adopting implementing measures to the Community legal acts (i.e. Level 1 Directives and Regulations adopted in the co-decision).

### ***European Central Bank***

The European Central Bank will be involved in the new system of supervision both through the participation to the ESRB and through the provision of the Secretariat to the Board. Both activities will imply a limited additional burden since the European Central Bank can largely exploit synergies from the resources deployed to pursue its monetary and financial stability tasks. Moreover, the European Central Bank will benefit from the well established network with other EU Central Banks - including non-Euro Area Central Banks - and Supervisors. The ESRB related activities will enable the European Central Bank to progressively reinforce such links with positive effects also for the other tasks included in the European Central Bank mandate

### ***National Central Banks***

The participation in the ESRB and the input to the work of the Secretariat will not involve any significant additional costs for national central banks since they will be able to largely build

on existing organisational and infrastructural resources dedicated to their traditional role. On the other hand, as regards the positive impact, they will benefit from an enhanced cooperation and harmonisation of methodologies and working methods among themselves.

### ***Financial institutions***

As indicated in the first Impact Assessment, the reform of the system of financial supervision in Europe will bring many benefits for financial companies. For large financial groups, the improved cross-border and cross-sector supervision will reduce compliance costs thanks to harmonised standards and supervisory practices and will also potentially prevent failures and bankruptcies. The work of the ESRB will contribute to the improved business environment thanks to enhanced financial stability and more effective crisis prevention in the EU, which will benefit all companies in the Internal Market.

On the other hand, companies may be subject to additional reporting requirements, linked with the ESFS task of collecting and managing information for supervisory purposes, especially in case of direct request for access to information from an ESA to a company. Besides, some administrative burden may be caused to companies by possible adaptations of national reporting systems. As regards ESRB collection of information, as the ESRB would have access through the ESAs to existing reporting schemes, there should be no impact in terms of additional reporting burdens for financial institutions.

Taking account of the powers to be granted to the ESFS, two more specific impacts can be singled out. First, the credit rating agencies registered in the EU will undergo direct supervision by the European Securities Markets Authority. This will include full supervisory oversight, conducting on-site inspections and other relevant activities.

Secondly, the establishment of the Joint Committee for three European Supervisory Authorities will be a basis for further strengthening of oversight of financial conglomerates at the European level. In the ESFS, each Authority will have to devote a due part of its resources for ensuring effective cross-sector cooperation on an on-going basis.

### ***Other stakeholders***

The new system for financial supervision will bring general **benefits** to various stakeholder groups in Europe, in particular the users of financial services. A better organised and functioning supervision will help the EU financial sector regain its classical role in the economy: to channel savings into most productive investments, and thus support the economic growth. More specifically, the benefits will above all be linked with the increased confidence of consumers, investors and entrepreneurs resulting from the enhanced financial stability in the Internal Market. The new supervisory system will also provide better protection to users of financial services, including through greater convergence of conduct-of-business supervision. It will also facilitate access to finance by strengthening the resilience and preventing failure of individual financial institutions. Last but not least, it will prevent job losses and support job creation: in the EU financial services sector as well as other sectors through the spill-over effects.

To ensure appropriate input of various stakeholders into the decision making process of the new Authorities, a dedicated stakeholder group will be created for each authority. Each group will count thirty members representing in balanced proportions the consumers and users, the

industry and its employees. The groups will hold regular quarterly meetings. The European Supervisory Authorities may also consult them on an ad-hoc basis on any relevant matter. These bodies will provide the stakeholders, in particular the representatives of the consumer associations and the trade unions, with a structured way to provide their opinions on various aspects of financial supervision in Europe. The ESRB will have the ability to consult stakeholders and utilise independent experts and academics where it is appropriate.

### 7.3. Cost of the selected options.

#### 7.3.1. ESFS

The cost of setting up the three new European Supervisory Authorities has been estimated according to three cost categories: the staff costs, the infrastructure costs and the operations costs. This division corresponds to the general cost classification used in accounts of the existing EU regulatory agencies. The total costs of creating the European Supervisory Authorities has been estimated at about 37 million Euro in the first full year of operations (2011), reaching over 68 million Euro after three years (2014) – see Table 24 below.

**Table 24. Estimated budget of three ESAs in 2011-2014**

In thousands €

	2011	2012	2013	2014
<b>Title 1 - Staff costs</b>	<b>18.843</b>	<b>28.096</b>	<b>34.808</b>	<b>40.280</b>
<b>Management</b>	2.553	4.173	4.423	4.673
<b>Senior / expert staff:</b>				0
Temporary agents	7.436	10.894	14.165	16.488
Seconded national experts	3.880	5.560	7.180	8.260
<b>Administrative and other support staff:</b>				0
Temporary agents	1.696	2.570	3.064	3.865
Contract agents	286	487	546	722
Staff benefits	2.378	3.553	4.407	5.101
Staff training: general	74	110	137	161
Staff training: enhancing supervisory skills	414	603	779	914
Expenditure relating to staff recruitment	127	146	108	96
<b>Title 2 - Building, equipment and administrative expenditure</b>	<b>5.923</b>	<b>9.176</b>	<b>10.902</b>	<b>12.649</b>
Rental of buildings and associated costs	3.014	4.824	5.494	6.287
Information and communication technology	759	1.136	1.414	1.661
Movable property and associated costs	325	495	599	721
Current administrative expenditure	275	417	508	609
Postage / Telecommunications	226	329	407	483
Meeting expenses	1.324	1.975	2.480	2.889
<b>Title 3 – Operations</b>	<b>12.496</b>	<b>13.996</b>	<b>14.929</b>	<b>15.496</b>
<b>Powers</b>				
Financial Services Stakeholder Group	648	648	648	648
Participation in colleges of supervisors	104	104	104	104



Common training for supervisors and staff exchanges & secondments	1.500	3.000	3.933	4.500
Collection of information: developing and managing the central European databases	9.000	9.000	9.000	9.000
International relations	150	150	150	150
Contacts with supervisory authorities from 3rd countries	180	180	180	180
Supervision on entities with a Community-wide reach: on site inspections	300	300	300	300
<b>Governance</b>				
Board of Supervisors	250	250	250	250
Management Board	77	77	77	77
Joint Committee	29	29	29	29
Board of Appeal	259	259	259	259
<b>TOTAL</b>	<b>37.263</b>	<b>51.268</b>	<b>60.639</b>	<b>68.426</b>

Source: Commission and L3 Committees estimates and calculations

The staff cost estimates are based on the assumption that each European Supervisory Authority will aim to double its staff as compared to the staff numbers in the existing Level 3 Committees in the first year of its operation. This means an average increase from 20 to 40 in each of the three Authorities. It has been also assumed that the number of staff would increase relatively fast in the start-up phase. Each authority would hire on average 15 new employees per year. Afterwards, the Authorities would reach the "cruising speed" with about 80 – 100 staff each.

The need for increased staffing numbers reflects the significant number of new tasks which the Authorities will need to undertake in addition to their previous responsibilities. They include, but are not limited to, developing new technical standards in a number of areas of financial services legislation, ensuring consistent application of Community rules, settling disagreements between national competent authorities, attending colleges of supervisors and facilitating peer reviews. Each of these activities will require significant new resources. The detailed breakdown of estimated staff numbers by various categories is presented in Table 25 below.

**Table 25. Estimated staff of ESAs**

	For three ESAs			
	2011	2012	2013	2014
<b>Total staff</b>	<b>123</b>	<b>184</b>	<b>229</b>	<b>269</b>
<b>Management</b>	11	19	20	21
<b>Senior / expert staff:</b>				
Temporary agents	60	88	114	134
Seconded national experts	32	46	59	69
<b>Administrative and other support staff:</b>				
Temporary agents	14	21	25	31
Contract agents	6	10	11	14

Source: Commission estimates

Another assumption adopted for estimation of the staff costs is that the Staff Regulation of EU institutions would be applied in all the Authorities. This is reflected – with some modifications – in per head rates used under Title 1 (see Annex 1 for details). The impact of the locations of the L3 Committees has also been taken into account (through the cost-of-living multipliers).

The figures under Title 2 relating to the cost of infrastructure have been based on the input from the existing Level 3 Committees. The CEBS, CEIOPS and CESR provided estimates of their respective costs in this category, based on extrapolation of their real costs linked with running offices and administration in their current locations. Given that London, Frankfurt and Paris are financial centres and are among most expensive business locations in the world, the estimated costs naturally exceed the average levels for the EU regulatory agencies.

The operation costs are specific to the competencies and the governance model of the European Supervisory Authorities. Regarding powers, various types of activities foreseen for the ESFS have been considered in terms of generating operational costs apart from the general staff costs. It has been possible to attribute such costs to a number of activities, e.g. running the stakeholder groups, developing the European supervisory databases, participating in the colleges of supervisors, organising training for supervisors from the Member States or carrying out on-site inspections of directly supervised companies. The specific costs for these operations are very often linked with missions and meetings, but can also include substantial expense on outsourced services, e.g. to create a database or organise trainings.

On the other hand, it has been judged that many of the ESFS activities are not linked with extra operational costs and are fully reflected in the general staff costs. These are for example the development of technical standards, guidelines and recommendations, ensuring consistent application of the Community law or the coordination in crisis situations.

Regarding the governance, the operational costs will stem from activities of various bodies foreseen to ensure proper functioning of the European System of Financial Supervisors in general and the Authorities in particular: the Board of Supervisors, the Management Board, the Joint Committee and the Board of Appeals.

The methods of calculating the costs are presented more in detail in tables for EBA, EIOPA and ESMA in Annex 1.

### **7.3.2. ESRB**

As indicated above in section 6.2.3., regarding the costs of the ESRB, it has been not possible at this stage to obtain sufficient information to evaluate the staffing needs and costs, and other costs of the ESRB, such as IT equipment and travel expenses, because the ECB does not envisage setting up a dedicated structure but would rather leverage the staff, resources and expertise of various departments in the ECB, depending on the issues to be analysed. It was therefore not possible to determine upfront e.g. the number of full-time equivalent staff which would work in relation to the ESRB. The cost of the option could consequently not be assessed.

## 8. Monitoring and evaluation

The Regulations establishing the ESFS and the ESRB provide for evaluation of the new system for European financial supervision three years from the effective start of its operation. The Commission will prepare two reports on the experience with functioning of the ESFS and ESRB respectively. The evaluation will also include extensive consultation, in particular of the Financial Services Stakeholder Group in case of the ESFS and the European Central Bank for the ESRB.

As stated in the first Impact Assessment report, specific indicators should be identified and matched with the ESFS and ESRB specific objectives and – where possible – also with the specific powers or elements of the governance structure. These indicators will serve to assess the performance of the new Authorities and the new Board in fulfilling their tasks. The following table presents the specific objectives of the European Supervisory Authorities and matches them with some possible indicators:

Objective	Proposed indicator
<b>The development of technical standards to build a single rulebook in the EU</b>	<ul style="list-style-type: none"> <li>• Number of adopted technical standards relative to those required to be developed</li> <li>• Number of standards proposed by EBA / EIOPA / ESMA and rejected by the Commission</li> <li>• Number of adopted non-binding recommendations</li> </ul>
<b>Ensure consistent application of EU rules</b>	<ul style="list-style-type: none"> <li>• Number of successful mediations without binding settlement</li> <li>• Number of warnings on manifest breach of the Community law</li> </ul>
<b>Ensure a common supervisory culture: participation in colleges of supervisors</b>	<ul style="list-style-type: none"> <li>• Number of colleges with EBA / EIOPA participation</li> <li>• Average number of meetings per college attended by EBA / EIOPA representatives</li> </ul>
<b>Ensure a common supervisory culture: other activities</b>	<ul style="list-style-type: none"> <li>• Number of hours training for supervisors</li> <li>• Number of staff participating in exchanges / secondments</li> <li>• Number of peer reviews conducted</li> <li>• Number of obstacles to convergence identified and removed</li> <li>• New practical tools and instruments to promote convergence</li> </ul>
<b>Carry out direct supervision of pan-European financial institutions</b>	<ul style="list-style-type: none"> <li>• Number of on-site inspections by ESMA</li> <li>• Number of complaints / appeals from supervised companies</li> </ul>
<b>Ensure coordinated decision making in emergencies</b>	<ul style="list-style-type: none"> <li>• Effectiveness of mediation, decisions and coordination in crisis situations</li> </ul>
<b>Ensure a common supervisory culture: Collect and manage micro-prudential information</b>	<ul style="list-style-type: none"> <li>• Progress in development of the central databases: completeness and timeliness of information</li> </ul>

The final set of indicators will be decided by the Commission at the time of conducting the required evaluations. Not less important in the final assessment will be the qualitative evidence gathered in the consultations.

The evaluations will be repeated every three years.

## ANNEX 1

### ESFS costing tables

**Table 1. Estimated budget of EBA in the first year of operation (2011)**

In thousands €

<b>Title 1 - Staff costs</b>			<b>6 694</b>
<b>Total staff:</b>	<b>40</b>	Average annual cost per head (based on DG BUDG guidelines and 3L3 advice)	
Multiplier cost-of-living	London	1,4	
<b>Management</b>	2	233,8	468
<b>Senior / expert staff:</b>			
Temporary agents	17	140,0	2 380
Seconded national experts	17	140,0	2 380
<b>Administrative and other support staff:</b>			
Temporary agents	2	140,0	280
Contract agents	2	58,8	118
Staff benefits	15% of total staff costs		844
Staff training: general	Average amount per person (COM data)	0,6	24
Staff training: enhancing supervisory skills	Advice from 3L3	4,5	153
Expenditure relating to staff recruitment	3 candidates interviewed per post on average	0,8	48
<b>Title 2 - Building, equipment and administrative expenditure</b>			<b>2 226</b>
Rental of buildings and associated costs	CEBS data and estimates		1 326
Information and communication technology	CEBS data and estimates		245
Movable property and associated costs	CEBS data and estimates		54
Current administrative expenditure	CEBS data and estimates		53
Postage / Telecommunications	CEBS data and estimates		19
Travel and meeting expenses	CEBS data and estimates		529

<b>Title 3 - Operations</b>		-	<b>4 095</b>
<b>Powers</b>	Costed activity	Assumptions	Total cost
Consultations	Financial Services Stakeholder Group	One FFSG per each ESA. 30 members meeting 4 times a year. Annual remuneration 6000€ per person. Industry representatives to be reimbursed for travel but not remunerated.	216
Common supervisory culture	Participation in colleges of supervisors	Approximately 40 colleges in the sector. Participating in 1 two day meeting per year, one EBA rep. per meeting on average.	64
Common supervisory culture	Common training for supervisors and staff exchanges & secondments	Based on the amount foreseen for action grants to the L3C for 2010-2015	500
Collection of information	Developing and managing the central European database	CEBS estimate	3 000
International relations	Contacts with third country authorities and other international bodies e.g. for equivalence advice	11 missions outside EU per year for 2 persons.	110
Supervision of entities with a Community-wide reach	On site inspections		0
<b>Governance</b>	Costed activity	Assumptions	Total cost
Board of Supervisors	Decision making	26 members to be reimbursed - 4 meetings per year.	83
Management Board	Management	6 members including 4 representatives of national supervisors. Meeting every month, when possible back to back with meetings of Board of Supervisors.	26
Joint Committee	Cross-sector cooperation	Period meetings for chairperson from each ESA	10
Board of Appeal	Appeals	6 members, assuming 8 meetings per year, and annual remuneration 8000€ per person	86
<b>TOTAL</b>			<b>13 015</b>

Source: Commission and the L3 Committees estimates and calculations

**Table 2. Estimated budget of EIOPA in the first year of operation (2011)**

In thousands €

<b>Title 1 - Staff costs</b>			<b>4 694</b>
<b>Total staff:</b>	<b>40</b>	Average annual cost per head (based on DG BUDG guidelines and 3L3 advice)	
Multiplier cost-of-living	Frankfurt	1,00	
<b>Management</b>	2	167,0	334
<b>Senior / expert staff:</b>			
Temporary agents	15	100,0	1 500
Seconded national experts	15	100,0	1 500
<b>Administrative and other support staff:</b>			
Temporary agents	4	100,0	400
Contract agents	4	42,0	168
Staff benefits	15% of total staff costs		620
Staff training: general	Average amount per person (COM data)	0,6	24
Staff training: enhancing supervisory skills	Advice from 3L3	4,5	135
Expenditure relating to staff recruitment	3 candidates interviewed per post on average	0,8	48
<b>Title 2 - Building, equipment and administrative expenditure</b>			<b>1 822</b>
Rental of buildings and associated costs	CEIOPS data and estimates		828
Information and communication technology	CEIOPS data and estimates		250
Movable property and associated costs	CEIOPS data and estimates		213
Current administrative expenditure	CEIOPS data and estimates		166
Postage / Telecommunications	CEIOPS data and estimates		70
Travel and meeting expenses	CEIOPS data and estimates		293
<b>Title 3 - Operations</b>		-	<b>4 071</b>
<b>Powers</b>	Costed activity	Assumptions	Total cost
Consultations	Financial Services Stakeholder Group	One FFSG per each ESA. 30 members meeting 4 times a year. Annual remuneration 6000€ per person. Industry representatives to be reimbursed for travel but not remunerated.	216

Common supervisory culture	Participation in colleges of supervisors	Approximately 25 colleges in the sector. Participating in 1 two day meeting per year, one EIOPA rep. per meeting on average.	40
Common supervisory culture	Common training for supervisors and staff exchanges & secondments	Based on the amount foreseen for action grants to the L3C for 2010-2015	500
Collection of information	Developing and managing the central European database	CEBS estimate	3 000
International relations	Contacts with third country authorities and other international bodies e.g. for equivalence advice	11 missions outside EU per year for 2 persons.	110
Supervision of entities with a Community-wide reach	On site inspections		0
<b>Governance</b>	<b>Costed activity</b>	<b>Assumptions</b>	<b>Total cost</b>
Board of Supervisors	Decision making	26 members to be reimbursed - 4 meetings per year.	83
Management Board	Management	6 members including 4 representatives of national supervisors. Meeting every month, when possible back to back with meetings of Board of Supervisors.	26
Joint Committee	Cross-sector cooperation	Periodic meetings for chairperson from each ESA	10
Board of Appeal	Appeals	6 members, assuming 8 meetings per year, and annual remuneration 8000€ per person	86
<b>TOTAL</b>			<b>10 587</b>

Source: Commission and the L3 Committees estimates and calculations

**Table 3. Estimated budget of ESMA in the first year of operation (2011)**

In thousands €

<b>Title 1 - Staff costs</b>			<b>7 455</b>
<b>Total staff:</b>	<b>43</b>	Average annual cost per head (based on DG BUDG guidelines and 3L3 advice)	
Multiplier cost-of-living	Paris	1,27	
<b>Management</b>	7	250,2	1 751
<b>Senior / expert staff:</b>			
Temporary agents	28	127,0	3 556
Seconded national experts		127,0	-
<b>Administrative and other support staff:</b>			
Temporary agents	8	127,0	1 016
Contract agents		53,3	-
Staff benefits	15% of total staff costs		948
Staff training: general	Average amount per person (COM data)	0,6	26
Staff training: enhancing supervisory skills	Advice from 3L3	4,5	126
Expenditure relating to staff recruitment	3 candidates interviewed per post on average	0,8	31
<b>Title 2 - Building, equipment and administrative expenditure</b>			<b>1 876</b>
Rental of buildings and associated costs	CESR data and estimates		860
Information and communication technology	CESR data and estimates		264
Movable property and associated costs	CESR data and estimates		58
Current administrative expenditure	CESR data and estimates		57
Postage / Telecommunications	CESR data and estimates		136
Travel and meeting expenses	CESR data and estimates		502
<b>Title 3 - Operations</b>		-	<b>4 331</b>
<b>Powers</b>	Costed activity	Assumptions	Total cost
Consultations	Financial Services Stakeholder Group	One FFSG per each ESA. 30 members meeting 4 times a year. Annual remuneration 6000€ per person. Industry representatives to be reimbursed for travel but not remunerated.	216



Common supervisory culture	Participation in colleges of supervisors		0
Common supervisory culture	Common training for supervisors and staff exchanges & secondments	Based on the amount foreseen for action grants to the L3C for 2010-2015	500
Collection of information	Developing and managing the central European database	CEBS estimate	3 000
International relations	Contacts with third country authorities and other international bodies e.g. for equivalence advice	11 missions outside EU per year for 2 persons.	110
Supervision of entities with a Community-wide reach	On site inspections	CESR estimates	300
<b>Governance</b>	<b>Costed activity</b>	<b>Assumptions</b>	<b>Total cost</b>
Board of Supervisors	Decision making	26 members to be reimbursed - 4 meetings per year.	83
Management Board	Management	6 members including 4 representatives of national supervisors. Meeting every month, when possible back to back with meetings of Board of Supervisors.	26
Joint Steering Committee	Cross-sector cooperation	Periodic meetings for chairperson from each ESA	10
Board of Appeal	Appeals	6 members, assuming 8 meetings per year, and annual remuneration 8000€ per person	86
<b>TOTAL</b>			<b>13 662</b>

Source: Commission and the L3 Committees estimates and calculations

## ANNEX 2

### Impact of the ESFS and ESRB on stakeholders

	<b>Micro-prudential supervision ESFS (3 Authorities)</b>	<b>Macro-prudential supervision ESRB</b>
<b>Financial industry: cross-border</b>	<p style="text-align: center;">+</p> <p>Prevent failure of financial institutions through better co-ordinated supervision. Ensure level playing field and reduce compliance costs thanks to harmonised standards and supervisory practices. Improve business environment thanks to financial stability and more effective crisis prevention in the EU.</p> <p style="text-align: center;">-</p> <p>Possible increase of administrative burden linked with reporting directly to ESAs or adapting to ESAs' format.</p>	<p style="text-align: center;">+</p> <p>Prevention of failure of financial institutions through systemic contagion from other financial institutions in difficulty. Improved business environment due to financial stability and crisis prevention in the EU</p>
<b>Financial industry: local</b>	<p style="text-align: center;">+</p> <p>Improved business environment due to more effective financial stability and crisis prevention in the EU</p> <p style="text-align: center;">-</p> <p>Possible increase of administrative burden linked with reporting directly to ESAs or adapting to ESAs' format</p>	<p style="text-align: center;">+</p> <p>Prevention of failure of financial institutions through systemic contagion from other financial institutions in difficulty. Improved business environment due to financial stability and crisis prevention in the EU</p>
<b>Financial industry: 3<sup>rd</sup> countries</b>	<p style="text-align: center;">+</p> <p>Attracting investments to Internal Market thanks to harmonised business environment and high quality supervision</p> <p style="text-align: center;">-</p> <p>Need to adapt to additional EU standards</p>	<p style="text-align: center;">+</p> <p>Attracting investments to Internal Market thanks to increased financial stability</p>
<b>Consumers and users of financial services (including retail investors)</b>	<p style="text-align: center;">+</p> <p>Lower risk of failure of a financial institution. Greater convergence of conduct-of-business supervision in Europe through adoption of common supervisory practices</p> <p style="text-align: center;">-</p>	<p style="text-align: center;">+</p> <p>Increase confidence by strengthening financial stability</p>

	Cost of creating the ESFS higher than that of previous L3 Committees	
<b>Employees</b>	<p style="text-align: center;">+</p> <p>Preventing job losses in individual financial institutions by better detecting and remedying prudential-related difficulties</p> <p style="text-align: center;">-</p> <p>Cost of creating the ESFS higher than that of previous L3 Committees</p>	<p style="text-align: center;">+</p> <p>Preventing job losses in the economy as a whole arising from spill-over of financial sector difficulties to the real economy</p>
<b>Pensioners</b>	<p style="text-align: center;">+</p> <p>Providing incentives for development of cross-border occupational pension funds and strengthening their oversight. Improve stability of pension funds</p> <p style="text-align: center;">-</p> <p>Cost of creating the ESFS higher than that of previous L3 Committees</p>	<p style="text-align: center;">+</p> <p>Strengthened confidence of pensioners by strengthening financial stability. Improve stability of pension funds.</p>
<b>Corporations from non-financial sector and SMEs</b>	<p style="text-align: center;">+</p> <p>Facilitating access to finance by better preventing failure of individual institutions (e.g. European Authorities in oversight of credit ratings, approval of prospectuses)</p> <p style="text-align: center;">-</p> <p>Cost of creating the ESFS higher than that of previous L3 Committees</p>	<p style="text-align: center;">+</p> <p>Preventing major financial crises with damaging impacts on corporate equity value. Preventing major economic recessions linked with reduction of trade and demand.</p>
<b>Supervisors</b>	<p style="text-align: center;">+</p> <p>Ensuring more effective cooperation by clarifying the roles and responsibilities of supervisors at the national and Community level and establishing an effective framework for conflict resolution between supervisors. Indirect strengthening of supervisory independence and European programmes to enhance skills of supervisors</p> <p style="text-align: center;">-</p> <p>Need to invest financial and human resources in the new Authorities. Higher costs arising from increased participation and coordination requirements</p>	<p style="text-align: center;">+</p> <p>Creating a framework linking micro-prudential supervision with macro-prudential supervision. Facilitating exchange of information and leading to creation of a common information pool.</p>

<b>National governments</b>	<p style="text-align: center;">+</p> <p style="text-align: center;">Establishing EU supervisory arrangements that are more consistent with European financial integration. Less risks of having to inject public money in the financial system.</p> <p style="text-align: center;">–</p> <p style="text-align: center;">Risk of needing to use the safeguards</p>	<p style="text-align: center;">+</p> <p style="text-align: center;">Providing governments with recommendations for actions needed to protect macro-economic stability in the EU and individual Member States</p> <p style="text-align: center;">–</p> <p style="text-align: center;">Risk of reputation damage in case of leak of ESRB warnings</p>
<b>Central banks</b>	<p style="text-align: center;">+</p> <p style="text-align: center;">Establishing EU supervisory arrangements that are more consistent with European financial integration.</p>	<p style="text-align: center;">+</p> <p style="text-align: center;">Giving effectiveness to the analysis of macro prudential developments carried out in the central banks. Facilitating exchange of information and leading to creation of a common information pool.</p> <p style="text-align: center;">–</p> <p style="text-align: center;">Need to invest human and financial resources in the ESRB work</p>

Source: European Commission. Impact Assessment for the Communication 'European financial supervision' of 27 May 2009 with modifications

### **ANNEX 3**

#### **Preliminary outline of possible sectoral legislation granting European Supervisory Authorities scope to develop draft technical standards**

**FINANCIAL CONGLOMERATES DIRECTIVE  
2002/87/EC**

<i>Area</i>	<i>Description</i>	<i>Rationale</i>
Durable link criterion for identification - Article 2(11)	The detection of relationships of the conglomerate with entities that may pose additional risks to the group, also otherwise than through a control- or ownership-relationship	Currently no level playing field, nor legal certainty, in application of durable link criterion to detect participations
Relevant competent authorities, i.e. membership of the core college - Article 2(17)	The criteria for the determination of the "relevant competent authority", as different from the other "competent authorities" (all those who authorised one or more legal entities of the group)	Determination of which supervisor may be invited to the core college is not clear, important for consistent approach across colleges
Identification of a conglomerate by means of other criteria than balance sheet and solvency figures - Article 3(5)	The basic identification method builds on two relative indicators and one absolute indicator: balance sheet ratios, solvency ratios, and balance sheet total. To enable the identification of other, less straightforward, complex and cross sectoral groups as financial conglomerates, also criteria such as income structure and off balance sheet activities may be used, but the legal provision does not prescribe how these alternative criteria should be applied	Use of other criteria than balance sheet total and solvency figures for the identification of conglomerates neither clear nor predictable
Method of calculation of capital at conglomerate level - Article 6(2)	There are two basic methods eligible for aggregating the capital figures of all the legal entities in a group and calculating available group capital, known as the consolidation method and the deduction-and-aggregation method, consistent with CRD and Solvency II. However, the inputs into these methods are not prescribed, leaving scope for significant variation	Although the directive restricts the methods which can be used for the calculation of capital, many degrees of freedom remain, potentially causing unjustified different outcomes for similar conglomerates
Supervision of risk concentrations - Article 7	The aspects which need to be checked by supervisors in order to detect whether the same risk adds up throughout the financial conglomerate	The directive allows for many approaches and potentially overlaps of supervision on risk concentrations within sector-silos. It is important to align application across directives applicable to conglomerates
Supervision of Intra group transactions - Article 8	The aspects which need to be checked by supervisors in order to detect whether risks in one part of the conglomerate may spread to or affect other parts of the conglomerate	The directive allows for many approaches and potentially overlaps supervision on intra group transactions. It is important to align application across directives applicable to conglomerates
Supervision on internal control	Supervision on internal control mechanisms, such as risk management and internal governance. Closely related to elements in the supervisory review	As far as relevant for the cross sectoral elements of conglomerates' risk management and internal control, need for alignment of

mechanisms - Article 9	process, required by both the CRD and Solvency II.	application across directives applicable to conglomerates
Appointment of coordinating supervisor - Article 10	The coordinator is determined following several criteria but the directive provides flexibility in case the involved supervisors would favour a certain choice. Article 10 should be read combined with articles 11, 12 and 15	To limit the scope for disagreement over who should be the coordinator of the supplementary supervision
Tasks of coordinating supervisor - Article 11	The coordinator's tasks are clearly listed but the directive does not prescribe how these tasks should be carried out. Article 11 should be read combined with articles 10, 12 and 15	Variation of practices and lack of clarity with respect to the application of the tasks listed can create uncertainty
Information exchange requirements - Article 12	Supervisors on the same conglomerate are obliged to share information based on a prescribed list of items. Article 12 should be read combined with articles 10, 11 and 15	Variation of practices and lack of clarity with respect to the application of the information exchange requirements, including for emergency situations
Delegation of tasks - Article 15	Supervisors on the same conglomerate can decide to delegate verification tasks to each other. Article 15 should be read combined with articles 10, 11 and 12	Variation of practices and lack of clarity with respect to the application of this provision

**CAPITAL REQUIREMENTS DIRECTIVE  
2006/48/EC and 2006/49/EC<sup>10</sup>**

<b>Area</b>	<b>Description</b>	<b>Rationale</b>
Pillar 2 – interest rate risk - Article 150(2)(a)	Specification of the size of sudden and unexpected changes in the interest rates referred to in Article 124(5)	Technical issue to strengthen supervisory convergence
Temporary changes to requirements - Article 150(2)(b)	Temporary modification of the minimum level of own funds and/or the risk weights in order to take account of specific circumstances in view of ensuring financial stability. This will also extend to temporary modification of the disclosure framework (Pillar 3)	Flexibility required. Technical standards would provide some flexibility to respond to financial stability developments
Supervisory disclosure - Article 150(2)(d) and (e) and Article 144	Framework for supervisory disclosure	Technical issue to strengthen supervisory convergence. CEBS guidelines already exist in this area
Authorisation - Article 6	Specification of requirements for a credit institution to be authorised in a Member State	Technical issue to strengthen supervisory convergence
Prudential assessment of acquisitions - Article 19-21	Specifications of procedure, assessment criteria and information exchange when making a prudential assessment of an acquisition	Technical/practical issue, to strengthen supervisory convergence. CEBS guidelines currently exist in this area
Exercise of the passport - Articles 25, 26, 28	Relates to the transmission of information between home and host authorities for the purpose of implementing the provisions relating to freedom to provide services/of establishment.	Practical issue. Supervisors best placed to deal with cooperation procedures. CEBS guidelines are being developed in this area
Information sharing - Article 42	List of information to be shared in the context of home/host cooperation	Technical/practical issue, to strengthen supervisory convergence
Hybrid instruments - Article 63a(6)	CEBS are required to produce guidelines on Tier 1 hybrid instruments under the amended CRD due to come into force in 2011	Technical issue, to strengthen supervisory convergence
Reporting – solvency and large exposures - Article 74 and 110(2)	CEBS are required to develop a uniform reporting (format, frequency and dates) to be applied by 2012 for credit institutions and investment firms' minimum capital requirements and large exposures	Technical issue, to strengthen supervisory convergence
Rating agencies (ECAI) – recognition - Article 81(2) and 97	Standards regarding the recognition of ECAI's in relation to the credit rating agencies regulation	Technical issue, to strengthen supervisory convergence, avoid duplication of work and reduce the burden of the recognition process where an ECAI is registered as a CRA. Further to the adoption of the CRA regulation, existing CEBS guidelines will need to be amended in this area

<sup>10</sup> Unless otherwise specified references are to Directive 2006/48/EC

Model validation – IRB system - Article 84	Conditions under which supervisors permit credit institutions to use their own models for calculating credit risk – known as the IRB Approach	Technical issues, to further specify existing requirements to strengthen supervisory convergence. CEBS guidelines already exist in these areas
Model validation – operational risk - Article 105	Conditions under which supervisors permit credit institutions to use their own models to calculate operational risk – known as Advanced Measurement Approaches	
Large exposures - Article 106(2), 113	CEBS are required in the amended CRD to clarify exemptions in points c) and d) relating to money transmission, and other exemptions provided in Article 113	Technical issue to strengthen supervisory convergence
Securitisation - Article 122a(10)	Standards to specify due diligence and retention requirements for institutions involved in securitisation activity, in particular regarding the measures that can be taken to deal with breaches of due diligence requirements. CEBS guidelines are required under the amended CRD	Technical and practical issue to strengthen supervisory convergence
Pillar 2 - Article 124, 129(3)	Standards regarding the joint decision process for assessing a groups overall risk profile and capital requirements, and the application of Pillar 2 (internal capital adequacy assessment process, supervisory review process, and decision to require additional own funds). Guidelines are required under the amended CRD	Practical issue. Supervisors best placed to deal with cooperation-related issues, and group risk assessments
Colleges - Article 131a(2)	Requires that operational functioning of Colleges of supervisors be based on written arrangements, underpinned by CEBS guidelines	Practical issue. Supervisors best placed to deal with cooperation procedures
Liquidity risk management - Annex V, points 15 to 17	Standards relating to the application of certain principles relating to liquidity risk management	Technical issues to strengthen supervisory convergence in these areas
Rating agencies (ECAI) – mapping - Annex VI, Part 2, points 12, 13 and 14	Standards regarding the mapping of ratings external ratings into risk weights. CEBS guidelines already exist in this area	
Model validation – market risk - Annex V of 2006/49/EC	Conditions under which supervisors permit credit institutions to use internal models to calculate their market risk. This includes specification of the requirements regarding the validation of internal models for incremental risk and migration risk and specification of the calculation of the stressed value-at-risk	



**INSTITUTIONS FOR OCCUPATIONAL RETIREMENT PROVISION DIRECTIVE  
2003/41/EC**

<i>Area</i>	<i>Description</i>	<i>Rationale</i>
Information to be provided to competent authorities - Article 13	There are persistent differences with regard to the amount of information that has to be submitted to the supervisory authority, as well as on the interval/frequency and the institution /party on which the reporting obligation lies	Technical issue, to strengthen supervisory convergence. Standards will enhance the level of transparency and comparability
Cross-border activities and cooperation between competent authorities - Article 21	The prudential requirements are supervised by the competent authorities of the home Member State, while the national social and labour law relevant to the field of occupational pension schemes is supervised by the competent authorities of the host Member State. In practice, however, for cross-border activity as referred to in Article 20 it is difficult to know for each Member State which rules fall within the scope of prudential law and which rules fall within the scope of national social and labour law. This, in turn, acts as a barrier to cross-border business. Moreover, the cooperation between competent authorities as referred to in Article 21 should be facilitated	The prudential matters refer to aspects dealt with in the Directive, such as the maximum interest rates or the biometric tables used. The technical standards should specify more clearly the rules falling under the mutual recognition principle and supervised by the competent authorities of the home Member State

## SOLVENCY II

The Solvency II directive is yet to be finalised and therefore will not be included in the October package of legislative changes described in the introduction

<i>Area</i>	<i>Description</i>	<i>Rationale</i>
Transparency and accountability of supervisory authorities - Article 30 (a)-(e)	Supervisory authorities are accountable for how they enforce compliance with prudential regulations. Therefore, appropriate disclosure by supervisory authorities on supervisory approaches and their legal basis is necessary	Standards on the format and structure of the disclosures to further specify the key elements set out in the implementing measure could further improve transparency and accountability and strengthen supervisory convergence
Supervisory reporting and public disclosure - Article 35 and 55	Information to be provided by insurance and reinsurance undertakings to supervisory authorities and information to be disclosed to the public in the Solvency and Financial Condition report. The public disclosure requirements aim to enhance market discipline and transparency	Standards could contribute to enhanced convergence by further specifying the principles set out in level 2, in particular in relation to reporting and disclosure templates
Prudential assessment of acquisitions <sup>11</sup> - Article 56-62	Specifications of procedure, assessment criteria and information exchange	Technical/practical issue. To promote supervisory convergence
Technical Provisions - Article 85 (a)-(h)	Technical provisions are the main component of an insurance undertakings' liabilities. Implementing measures will be developed to underpin the valuation of technical provisions	Standards which further specify the requirements set out at level 2 could contribute to ensuring the necessary flexibility whilst at the same time maintaining a level playing field
Own funds - Article 92, article 97 and article 99	Eligible own funds are classified into three tiers. The characteristics and criteria to do so need to be interpreted in the same way in order to ensure harmonisation	Standards which further specify the principles set out at level 2 could contribute to ensuring the necessary flexibility whilst at the same time maintaining a level playing field
Solvency Capital Requirement (SCR) - Article 109, 112 and 125	The SCR represents the level of capital insurers are expected to hold. Insurers will be able to use either the Standard Formula or an internal model to calculate the SCR. Implementing measures will be developed for both methods	If the standard formula is to remain truly risk sensitive over time, it may need to be regularly reviewed and if necessary updated to ensure that its calibration remains appropriate. Given each internal model will be tailored to the undertaking, it will also be difficult to be too prescriptive at level 2 particularly as practice is likely to evolve over time
Information - Article 253	Information to be gathered and disseminated systematically by the group supervisor to other supervisory authorities or to be transmitted to the group supervisor by other supervisory authorities	The directive sets out the general principles and the future level 2 measures could be complemented with standards in order to ensure the obligatory character of certain technical details such as the reporting and disclosure templates
Disclosure - Article 260	Information which must be disclosed and the means by which this is to be achieved as regards the single solvency and financial condition report	

<sup>11</sup> Directive 2007/44

**INSURANCE MEDIATION DIRECTIVE**

2002/92/EC

**The IMD is currently under review and these issues will be covered in its revision and the resulting legislative proposal due by the end of 2010**

<i>Area</i>	<i>Description</i>	<i>Rationale</i>
Professional indemnity insurance - Article 4(3)	This requirement is part of the professional requirements for insurance intermediaries (IIM). It obliges insurance and reinsurance IIM to hold Professional Indemnity Insurance covering the whole territory of the Community or some other comparable guarantee against liability arising from professional negligence, for at least EUR 1000000 applying to each claim and in aggregate EUR 1500000 per year for all claims (certain exemptions to this rule are contained further in the article)	The amounts are subject to regular review. Technical standards might establish a mechanism for carrying out these updates and consequently introduce a higher clarity for (especially) supervisory purposes, including the precision of methods of calculation
Information provision - Art. 12(1), (2) and (3). Additional legal basis: Art. 13 on information conditions	Art. 12 contains a list of (minimum) information to be provided by the IIM to the customer prior to the conclusion of any initial insurance contract, and if necessary, upon amendment or renewal thereof	The current Art. 12 will be thoroughly reviewed during the prepared revision of the IMD as the current minimum harmonisation does not represent the necessary guarantee for effective consumer protection. Technical standards in this area might further strengthen the harmonisation of these standards across the Single Market

**TRANSPARENCY DIRECTIVE  
2004/109/EC**

<i>Area</i>	<i>Description</i>	<i>Rationale</i>
Notification of major holding of voting rights - Article 12(8)(a), 13(2)(c)	Standard form for the notification of major holdings of voting rights and of financial instruments giving access to voting rights Standards could establish a standard form to be used throughout the Community when notifying required information on holdings of voting rights to the issuer and when filing this information with the competent authority	Relates to practical implementation of provisions of the Directive which is best left to supervisors. Standards could strengthen supervisory convergence
Supervisory convergence - Article 24(4)	Standards as regards supervisory practices and exercise by competent authorities of their powers in order to ensure compliance with directive's obligations.	Relates to the coordination and consistent exercise by competent authorities of their powers. This is an area where CESR already can adopt non-binding guidelines. However, standards in future could strengthen convergence.

**MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE  
2004/39/EC**

<i>Area</i>	<i>Description</i>	<i>Rationale</i>
Requirements for authorisation - Art., 7, 9, 10, 12	MiFID sets out various requirements that must be met before an investment firm can be authorised	Technical Standards specifying certain requirements for authorisation (e.g. the 'fit and proper' requirement) could help to ensure uniform application of authorisation process and strengthen convergence
Prudential assessment of acquisitions - Articles 10- 10b	Specifications of procedure, assessment criteria and information exchange [There is currently 3L3 guidance on cross border mergers and acquisitions]	Technical/practical issue. To further specify existing requirements to promote supervisory convergence
Information exchange - Art 56- 58, 60	Requires supervisory authorities to cooperate with each other. Standards could encompass templates to facilitate cooperation/information exchange between home and host (e.g. such as the standard notification template referred to above)	Supervisors may benefit from a more standardised process. Will also strengthen convergence

**MARKET ABUSE DIRECTIVE  
2003/6/EC**

<b><i>Area</i></b>	<b><i>Description</i></b>	<b><i>Rationale</i></b>
Information exchange - Art. 16	Under the MAD regime, supervisory co-operation – a prerequisite for effective cross-border enforcement – is expected to take place by way of exchanging information, alerting about suspected abuses and acting upon such notifications, seeking and offering assistance as well as collaborating in investigations and inspections. Templates/standards could facilitate cooperation/information exchange between supervisors (e.g. standard notification template)	Competent authorities are likely to engage more willingly and more effectively into supervisory co-operation if some of the co-operation aspects are standardised and/or formalised.

**PROSPECTUS DIRECTIVE****2003/71/EC**

<i>Area</i>	<i>Description</i>	<i>Rationale</i>
Cooperation between authorities - Art. 22.2	Obligation of the competent authorities to exchange information and cooperate with each other. Standards could facilitate information exchange/cooperation between home/host	Supervisors may benefit from a more standardised process. Will also strengthen supervisory convergence

**UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES DIRECTIVE**

**85/611/EEC (work on level 2 implementing measures is ongoing. The Commission intends to adopt the measures by 1 July 2010)**

<b>Area</b>	<b>Description</b>	<b>Rationale</b>
Content of the application for the authorisation of UCITS. – Art. 5(8)	The UCITS Directive requires UCITS to be authorised by its home competent authority. The authority has to approve (i) the application of the management company to manage a common fund (or the investment company, where relevant), (ii) the fund rules or the instruments of incorporation, and (iii) the choice of the depositary. Once a UCITS is authorised in one Member State, it can market its units in another Member State – subject to the notification procedure of Article 93 – without going again through the same process of authorisation.	Since UCITS benefit from the EU "passport", the authorisation process should be consistent throughout the Community. Competent authorities should require similar documentation, no matter in which Member State the authorisation is filed. In order to develop consistent supervisory practices and to ensure legal certainty, standards could specify the precise information that promoter of a UCITS has to submit to competent authorities to get the authorisation.
Conditions for the authorisation of the management company and the investment company. – Arts. 7(6) and 29(5)	UCITS management company and the self-managed investment company have to meet the conditions required by the Directive in order to be authorised. Once authorised, both entities can operate on a cross border basis.	Since both entities benefit from a "passport" in the EU, the competent authorities should interpret these conditions in a consistent way. In order to develop consistent supervisory practices and to ensure legal certainty, standards could further specify the information to be provided in the application for the authorisation, the content of the programme of activities and operations and the description of the organisational requirements and conduct of business rules. In addition, the standards could further specify the criteria for assessing the suitability of the persons conducting the business and of qualified shareholders.
Organisational requirements to minimise conflicts of interests – Art.12(3)	Management companies are required to adhere to some minimum prudential and organisational requirements. Level 2 provisions will set out the requirements in more detail.	Technical standards could further specify level 2 provisions to contribute to a common understanding and consistent application of the rules on organisational arrangements on internal control functions, complaints handling, personal transactions, electronic data processing, record keeping, accounting and organisational arrangements for minimising conflicts of interest.
Rules of conduct for management companies – Art 14(2)	UCITS Directive requires management companies to (i) act honestly, fairly and with due skill, care and diligence in the best interest of the UCITS; (ii) employ its resources effectively and performs its business activities properly; (iii) identify, prevent, manage or disclose conflicts of interests. These general principles will be complemented by Level 2 implementing legislation.	In order to promote the common understanding and consistent application of conduct of business rules, technical standards could complement level 2 measures by further specifying due diligence requirements and criteria for identifying and managing conflicts of interest.
Merger of UCITS - information to be provided to unit-holders - Art. 43(5)	UCITS involved in a merger have to provide their unit-holders with appropriate information (listed in Article 43(3)) about the merger, so that investors can make an informed judgement in advance of the operation. The specification of the content, format and method for providing the information will be implemented at level 2.	In order to strengthen supervisory convergence and to promote the same level of investor protection in the Community, technical standards could clarify certain elements related to the content, format and method of delivery of the information.
Clarification of UCITS investment	Article 50 of the Directive enumerates the categories of assets that UCITS can acquire and criteria according to which UCITS can invest. It is essential	In order to ensure consistent supervisory practices throughout the Community and respond to market innovation, standards could



criteria as referred to in Article 50 – Art. 50(4)	that UCITS and the competent authorities share a common understanding of the investment criteria of UCITS. Due to the constant innovation in the financial sector, new financial instruments are very often launched in the financial markets and traditional assets are further developed or present new features.	provide for a common understanding of the investment criteria of UCITS. Standards would represent the technical specifications of the categories of assets and criteria enumerated in Article 50 of the Directive and would not modify the content or scope of such Article.
Criteria for assessing the adequacy of the risk management process employed by a management company – Art. 51(1) and 51(4)	The risk management requirements laid down in the UCITS Directive will be further developed at Level 2. Level 2 measures should define the main principles governing the risk management process, in particular (i) the organisational arrangements, (ii) requirements on risk measurement that will allow fund managers to identify and manage properly the risk, (iii) report on derivative instruments.	In order to develop a common supervisory approach to risk management built on mutual trust between supervisors and to ensure a high standard of investor protection, technical standards could further specify technical aspects of risk management process. Technical standards would ensure the flexibility necessary to react to market developments and address particular cases or situations. Technical standards can further specify the requirements for the risk-measurement process and the content, form and frequency of communications to the management company's home Member State required under article 51(1).
Master-feeder structures – Arts. 60(6), 61(3)(a) and (b), 62(4), and 64(4)(a) and (b)	The recast of UCITS Directive has introduced a new and detailed legal framework for master-feeder structures. The Commission will adopt implementing measures specifying the regime applicable to master-feeder structures.	In order to strengthen supervisory convergence as well as be able to respond to market developments, technical standards could further specify elements of the level 2 implementing measures on the relationship between master and feeder UCITS and their depositaries and format and process for providing information.
Specification of the content and format of the prospectus, the annual report and the half-yearly report – Art. 69(2) and (3) and Art. 73	UCITS have to keep investors and markets periodically informed by publishing a prospectus, an annual report and a half-yearly report. The information items that should be displayed in these documents are listed in Annex I of the Directive. Where a UCITS is marketed in a host Member State, investors should receive these documents in the way prescribed by the laws of that host Member State. Hence, the different competent authorities should interpret in the same way the information requirements. In particular, competent authorities should share a common understanding of the accounting requirements for UCITS.	In order to ensure the same level of investors' protection throughout the Community and to promote consistent supervisory practices, standards could further specify the content and format of the prospectus, the annual report and the half-yearly report and the accounting obligations for UCITS. They will consist of technical clarifications of the elements listed in Annex I of the Directive.
Key investor information (KII) – Art 78	The manager of UCITS is obliged to draw up a short document containing key investor information (KII). The KII shall include appropriate information about the essential characteristics of the UCITS, so that investors can make informed investment decision and can understand the nature and the risk related to investment in a UCITS. Level 2 measures will define the detailed content and form of the KII.	Technical standards could usefully complement these definitions, contributing to common understanding and consistent application of provisions, in particular to the preparation, presentation and calculation of the information to be provided in the KII. Such standards would contribute to ensure a consistent level of investor protection throughout the Community.
Conditions for suspending the repurchase or the redemption of the	UCITS are obliged to repurchase or to redeem their units at the request of any unit-holder. In exceptional cases, if justified, a UCITS may temporarily suspend the repurchase or redemption of its units, taking into account the interests of the unit-holders. The UCITS should inform without delay the	In order to ensure the same level of investor protection and consistent supervisory practices throughout the Community, standards could further specify the conditions for the temporary suspension of the re-purchase or redemption of the units decided

units of UCITS – art. 84	supervisors of the Member States where it markets its units.	by the UCITS.
Notification of marketing of UCITS in host Member States – Art. 95	When a UCITS intends to market its units in a host Member State it must inform the competent authorities of its home Member State by submitting a notification letter. The process of the cross-border marketing of units involves the competent authorities of both UCITS home and host Member States. The notification letter is a piece of information addressed to competent authorities.	In order to promote an efficient cooperation between supervisors, standards could further specify technical arrangements of this obligation, in particular the form and content of the notification and the attestation, conditions for the electronic transmission of documentation and cooperation between supervisors.
Procedures for exchange of information between authorities and on-the-spot verifications and investigations – Art. 105 and 101(9)	The exchange of information between home and host authorities is crucial in order to allow supervisors to discharge their duties properly in relation to the cross-border activity of UCITS and their managers. Standards and procedures for handling requests for information should be defined in a consistent manner and the exchange of information should be subject to the confidentiality rules of Articles 102 to 104 of the Directive. In addition, UCITS Directive requires competent authorities to cooperate among them when needed to carry out on-the-spot verifications and investigations.	Standards may further specify the procedures for exchange of information between competent authorities in order to organise an efficient and adequate information flow. In addition, in order to ensure consistent supervisory practices throughout the Community and to develop an efficient cooperation between the competent authorities, technical standards could further specify the practical arrangements for cooperation between supervisors when carrying out on-the-spot verifications and investigations. These provisions are of direct concern to supervisors

## CRA Regulation

<i>Area</i>	<i>Description</i>	<i>Rationale/explanation</i>
Registration process, including on the information set out in Annex II, and language regime for applications submitted to the ESMA - Art. 21(2)(a) empowering provision <sup>12</sup>	CRAs are required to submit their applications for registration including necessary information set out in Annex II. Further in the registration process they may be required to provide additional information and documents to support their application for registration.	Technical issue which could strengthen convergence, expertise with supervisors
Information that the credit rating agency must provide for the application for certification and for the assessment of its systemic importance to the financial stability or integrity of financial markets referred to in Article 5 - Art. 21(3)(d) empowering provision <sup>13</sup>	A CRA from a 3 <sup>rd</sup> country that seeks to operate under the certification regime is proposed to register with the ESMA. The ESMA may take a decision on registration only after it establishes that specific conditions are met, on the basis of information provided by the overseas CRA in accordance with Article 5. Not being of systemic importance to the financial stability or integrity of financial markets is one of the preconditions for such certification.	Technical issue which could strengthen convergence, expertise with supervisors
Presentation of the information, including structure, format, method and period of reporting, that credit rating agencies shall disclose in accordance with Article 11(2) and point 1 of Part II of Section E of Annex I - Art. 21(2)(d) empowering provision <sup>14</sup>	A CRA to make available in a central repository established by CESR information on its historical performance data including the ratings transition frequency and information about credit ratings issued in the past and on their changes. In future, ESMA could make that information accessible to the public and shall publish summary information on the main developments observed on an annual basis. (Art. 11(2), Annex I.E.II.1)	Technical issue which could strengthen convergence, expertise with supervisors

<sup>12</sup> Under existing text of the CRA Regulation to be developed as guidance by CESR

<sup>13</sup> Under existing text of the CRA Regulation to be developed as guidance by CESR

<sup>14</sup> Under existing text of the CRA Regulation to be developed as guidance by CESR

**ANTI MONEY LAUNDERING DIRECTIVE  
2005/60/EC**

<b><i>Area</i></b>	<b><i>Description</i></b>	<b><i>Rationale/explanation</i></b>
AML consolidated group approach - Article 31(1) + 34(2)	Sets out the high level principle requiring EU financial institutions to establish adequate and appropriate policies and procedures of customer due diligence, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication equivalent to those defined by the Directive in their branches and majority-owned subsidiaries located in third countries. Non-cooperative countries and jurisdictions constitute a specific subset of third countries that deserve peculiar attention.	Technical standards could be developed to establish minimum criteria and practices for the supervision of compliance by EU credit and financial institutions with AML consolidated group approach and the "know-your-structure" principle in Articles 31(1) and 34(2) in connection with non-cooperative countries and jurisdictions
Supervisory convergence - Article 37	Standards as regards supervisory practices and exercise by competent authorities of their powers in order to ensure compliance with the directive's obligations	Relates to the coordination and consistent exercise by competent authorities of their powers. In this area, CESR already can adopt non-binding guidelines. However, binding standards may be needed in future in this area to strengthen convergence.

## **ANNEX 4**

### **Summary of replies received to the public consultation on the Commission Communication of 27 May 2009**

#### *Submissions received*

The total number of submissions received to date in reply to the public consultation on financial supervision is 98 (including those which arrived after the deadline of 15 July 2009). The breakdown is as follows:

EU Member States (finance ministries, central banks and supervisors):	8
Other public bodies (including EFTA/EEA, 3L3 committees, international bodies):	5
EU and national associations of undertakings, individual undertakings	66
Consumer and other user associations:	7
Trade Unions:	7
Private citizens:	5

A full list of contributors is provided in annex.

#### *General remarks*

Most contributions welcome the Communication and broadly support its conclusions, while several request more information or details and ask the Commission to allow for sufficient time in the process following the Communication. Moreover, many of the submissions cover not only issues related to the supervisory framework from the Communication but also other supervisory and regulatory issues.

#### *EU Member States (finance ministries, central banks and supervisors)*

Submissions were received from public authorities in 7 Member States (for some Member States more than one submission was received from different public bodies – see annex). It should be noted, however, that in addition, Member States have reached conclusions in the Ecofin and European Council of 9 June and 18-19 June 2009 respectively, in which they recommended that a European System of Financial Supervisors (ESFS), comprising three new European Supervisory Authorities (ESAs), is established combined with a single European rule book applicable to all financial institutions. They also supported the creation of a European Systemic Risk Board to monitor systemic risks.

With regard to *micro-supervision*, all submissions from Member States strongly or cautiously support the establishment of the ESFS, with the exception of the Czech Central Bank and the Czech Senate's EU Committee, which among other things made a number of comments regarding the quality of the impact assessment accompanying the Commission Communication. Contributions generally make suggestions or express concern on specific issues concerning the structure and the powers of the ESAs, such as the voting procedures, the

independence; several submissions stress the need to clarify the scope of the Authorities' powers to settle disputes and to act in emergency situations.

On *macro-supervision*, some replies strongly support the creation of the ESRB while others support it conditionally upon further details being provided. Two submissions favour an elected Chair of the ESRB, while another one supports the ECB as Chair. Further comments suggest that warnings and recommendations should not be channelled to the relevant addressees via the Council, but rather through the new ESAs.

#### Other public bodies (including EFTA/EEA, 3L3 committees, international bodies)

The *EFTA Authority* and the *Norwegian Ministry of Finance* request observer representation of EFTA-EEA countries on both the ESFS and the ESRB. The EFTA Authority argues that, since EEA supervisors participate in many colleges of supervisors, they should also participate in ESA board discussions on individual institutions.

The joint response of the Level 3 Committees is supportive of the Communication (the Czech representatives have not subscribed the response). On *micro-prudential supervision*, the Committees emphasise the need for regulatory, supervisory, institutional and financial independence of the Authorities, and request that the Commission should only endorse or reject, but not amend any technical standard developed by the new Authorities.

The IMF supports binding decision making powers of the three ESAs. It underlines the need for the ESRB to obtain prudential information also on individual systemic financial groups. The IMF also points out that representatives of central banks and supervisory authorities, which are among the main potential recipients of ESRB risk warnings and recommendations, constitute a majority on the ESRB Joint Committee, and is concerned that this may undermine the ESRB's ability to come to clear and appropriate warnings and recommendations to those bodies.

#### Sectoral associations and individual undertakings

This category of submissions, with 66 responses, forms the bulk of the contributions received, and views are diverse.

In terms of the Commissions proposed timetable, some submissions support the time table, while others consider it too ambitious and underline the need for time to apply principles of better regulation. Several submissions stress that the reforms primary objective should be to improve the quality of supervision and ensure that it is in line with developments at the international level so as to foster global supervisory convergence. Many submissions request that additional reporting burdens for industry should be either avoided or strictly proportionate, and request sufficient safeguards to be in place regarding the confidentiality of data on individual firms.

Most submissions concerning *micro-prudential supervision* support the proposals for an ESFS with varying degrees of caution, while some submissions request that the proposals should not undermine the role of the Commission and the achievements in the single market, such as passporting regimes. Several submissions suggest strengthening the independence of the Authorities, questioning for example whether the Commission should participate in the ESAs, and underlining the importance of financial independence and adequate staffing; others

however stress the need for adequate political accountability. Many submissions stress the need for private sector consultation.

Turning to decision making powers, submissions mostly support that the Authorities should develop technical standards. Many submissions stress that day-to-day supervision should remain at the national level; a number of replies request that colleges of supervisors should be the heart of supervision for cross-border groups, with a primary role for the home country supervisor (i.e., lead supervisor), counter-balanced by the possibility for other authorities to request settlement by the Authorities (and EU level oversight); some also advocate a single European supervisor for cross-border groups in the medium term. Other submissions are however opposed to binding dispute settlement. On the question of direct EU-level supervision of cross-border groups, several submissions support such powers over Credit Rating Agencies (CRA), while submissions are divided on similar powers over Central Counterparties (CCP).

Several contributions point to the differences between the banking sector on the one hand and the occupational pensions and the insurance sector on the other, with one suggestion to include pensions in the mandate of the European Securities and Markets Authority (ESMA), and another to have a specific consultative panel on occupational pensions.

Submissions concerning the *macro-prudential* proposals support the Communication either cautiously or more openly. A number of replies emphasise the importance of avoiding double reporting requirements and of confidential treatment of information received, with some submissions opposing the transfer of disaggregated data to the ESRB altogether, or only after prior consultation of the industry. Submissions request adequate industry consultation, and representatives from the insurance, occupational pensions, and securities industry are concerned that the ESRB's focus may be skewed towards banking and their views may not be adequately represented. Other submissions suggest that independent personalities should be part of the ESRB board, that ESRB warnings should remain confidential, and question whether the comply-or-explain mechanism will be sufficient to ensure effective follow-up to ESRB recommendations, suggesting a mandatory follow-up.

### Consumer bodies

Of the 7 submissions from consumer and end-user associations, most express cautious support on the Communication but also concerns regarding the level of ambition in particular with regard to various aspects of consumer protection, pointing for example to the consumer protection agency proposed in the US and arguing that a similar body should be established in the EU. One submission criticises that the impact assessment is too superficial on effects on stakeholders. With regard to governance aspects, several replies request stakeholder representation in the ESFS Supervisory Board and Joint Committee and the ESRB board and request obligations to consult stakeholders and a user panel. Other proposals are to introduce a right for consumers and investors to refer cases of non-compliant financial products to the Authorities for decision, and to make the proposed micro-prudential database available to the market. Several submissions support the proposed decision making powers, including the powers over CRAs and CCPs.

### Trade Unions

Most of the submissions of 7 trade unions support a stronger coordination at the European level, but some argue that the Commission should go much further. They request frequent consultation of employees by both micro- and macro-level supervisors and at least one union requested the establishment of formal 'whistle blower' procedures. Submissions vary on the political accountability of the ESFS and the ESRB. On *micro-prudential supervision*, submissions stress the importance of staffing. One submission requests that host authorities should be able to refer issues of inadequate supervision of products by home authorities to the ESAs for decision, and several submissions welcome that the ESAs should have decision making powers, while views are divided on the suggested powers over entities with a Community-wide reach. On *macro-prudential supervision*, one submission suggests to publish all ESRB warnings and recommendations.



## Annex - List of public submissions received

<u>EU Member States (finance ministries central banks and supervisors) and other public bodies</u>
1. Swedish Central Bank/Supervisor
2. Czech National Bank
3. Finnish Ministry of Social Affairs and Health
4. Polish Financial Supervision Authority
5. Romanian government
6. Austrian government
7. Czech Senate EU Committee
8. NL Government
Total: 8
<u>Other public bodies (including EFTA/EEA, 3L3 committees, international bodies)</u>
1. EFTA/EEA Standing committee
2. Norwegian Minister of Finance
3. 3L3 Committees joint response
4. Jersey Financial Services Commission
5. IMF Staff
Total: 5
<u>Industry – sectoral associations</u>
1. Af2i
2. Alternative Investment Management Association Limited (AIMA)
3. Association Française de la Gestion financière (AFG)*
4. Association of British Insurers ABI
5. Association of German Banks (BDB)*
6. Association of International Life Offices (“AILO”)
7. Associazione Bancaria Italiana
8. Austrian Federal Economic Chamber
9. Austrian Insurance Association (VVO)
10. British Bankers' Association (BBA)*
11. BVI Bundesverband Investment und Asset Management
12. CGPME* (in French)
13. City of London
14. Comité Européen des Assureurs (CEA)*
15. Confederation of british Industry (CBI)
16. Danish bankers Association
17. EFAMA (European Fund and Asset Management Association)*
18. EFRP (European Federation for Retirement Provision)*
19. European Association of Central Counterparty Clearing Houses*
20. European Association of Cooperative Banks (EACB)
21. European Association of Public Banks (EAPB)
22. European Banking Federation (EBF)
23. European Federation of Insurance Intermediaries (BIPAR)*
24. European Financial Services Round Table*
25. European Savings Banks Group
26. European Issuers
27. Fédération Bancaire Française*

28. Fédération Française des Sociétés d'Assurances (FFSA)*
29. Federation of Finnish Financial Services*
30. FEE - Federation des Experts comptables Europeens
31. Futures and Options Association
32. German Insurance Association *
33. German public savings- and giro-banks (BVR, VÖP, VDP, DSG)
34. ICAEW (Institute of Chartered Accountants in England and Wales)
35. ICMA (International Capital Market Association)*
36. International Financial Services London (IFSL)
37. International Training Centre for Bankers*
38. International Underwriting Association (IUA)*
39. Investment & Life Assurance Group (ILAG)*
40. Investment Management Association
41. l'AMAFI, Association française des marchés financiers*
42. Law Society of England & Wales
43. LIBA, SIFMA, and ISDA
44. Luxembourg Bankers' Association's (ABBL)*
45. MEDEF - Mouvement des Entreprises de France*
46. Pan European Insurance Forum (PEIF)
47. Polish Bank Association
48. Quoted Companies Alliance
49. Swedish Bankers' Association
50. Swedish Securities Dealers Association*
51. XBRL Europe*
Total: 51
<u>Industry – individual undertakings</u>
1. Aviva
2. BNP Paribas
3. Bolsas y Mercados Españoles (BME)
4. Crédit Agricole*
5. Deutsche Börse Group*
6. Goldman Sachs International
7. ING Group*
8. Intesa Sanpaolo*
9. MAF, MACSF, SMABTP and SHAM (insurers)
10. NasdaqOMX
11. Nordea
12. NYSE Euronext
13. PriceWaterhouseCoopers
14. Standard Chartered Bank
15. UniCredit*
Total: 15
<u>Consumers/investors organisations</u>
1. UK Financial Services Consumer Panel
2. CFA Institute Centre for Financial Market Integrity*
3. Verbraucherzentrale Bundesverband*
4. FINUSE
5. Association fédérative internationale des porteurs d'emprunts russes (AFIPER)*
6. La Voix des Emprunts Russes*
7. BEUC*

Total: 7
<u>Trade unions/Social partners</u>
1. Standing Committee of European Central Bank Unions*
2. Nordic Bank, Finance and Insurance Unions (NFU)*
3. Financial Sector Union of Sweden
4. German Trade Union Confederation (DGB) (NB in German)
5. Unite the Union
6. Bundesarbeitskammer Austria (BAK)* (in German)
7. UNI Europa Finance Union
Total: 7
<u>Private Individuals/academics/others</u>
1. Paul Goldschmidt
2. Antonio Lambe
3. University of Luxembourg
4. Adam Smith Institute*
5. Godfrey Bloom MEP (UKIP)
Total: 5

## **ANNEX 5**

### **European Council Conclusions of 18/19 June 2009**

19. The communication presented by the Commission on 27 May 2009 and the Council conclusions of 9 June 2009 set the way forward to the establishment of a new framework for macro- and micro-prudential supervision. The European Council supports the creation of a European Systemic Risk Board which will monitor and assess potential threats to financial stability and, where necessary, issue risk warnings and recommendations for action and monitor their implementation. The members of the General Council of the ECB will elect the chair of the European Systemic Risk Board.
20. The European Council also recommends that a European System of Financial Supervisors, comprising three new European Supervisory Authorities, be established aimed at upgrading the quality and consistency of national supervision, strengthening oversight of cross border groups through the setting up of supervisory colleges and establishing a European single rule book applicable to all financial institutions in the Single Market. Recognizing the potential or contingent liabilities that may be involved

for Member States, the European Council stresses that decisions taken by the European Supervisory Authorities should not impinge in any way on the fiscal responsibilities of Member States. Subject to this and supplemental to the Council conclusions of 9 June 2009, the European Council agrees that the European System of Financial Supervisors should have binding and proportionate decision-making powers in respect of whether supervisors are meeting their requirements under a single rule book and relevant Community law and in the case of disagreement between the home and host state supervisors, including within colleges of supervisors. ESAs should also have supervisory powers for credit rating agencies. The European Council further emphasizes the importance of ensuring that the new framework supports sound and competitive EU financial markets.

21. The European Council welcomes the Commission's intention to bring forward, by early autumn 2009 at the latest, the legislative proposals to put in place the new framework for EU supervision, fully respecting the balance of competences and financial responsibility and taking full account of the Council conclusions of 9 June 2009. These proposals need to be adopted swiftly in order for the new framework to be fully in place in the course of 2010. The European Council will take stock of progress at its meeting in October 2009 and will if necessary provide further direction.
22. It is equally important to further advance work on building a comprehensive cross-border framework for the prevention and management of financial crises. The European Council invites the Commission to make concrete proposals for how the European System of Financial Supervisors could play a strong coordinating role among supervisors in crisis situations, while fully respecting the responsibilities of national authorities in preserving financial stability and in crisis management in relation to potential fiscal consequences and fully respecting central banks' responsibilities, in particular with regard to the provision of emergency liquidity assistance.