European Economic Area
Consultative Committee
Comité consultatif
de l'Espace Économique Européen
Beratender Ausschuß
des Europäischen Wirtschaftsraums

E U R O P E A N E C O N O M I C A R E A

C O N S U L T A T I V E C O M M I T T E E

Ref. 1097211
19 May 2010
Vaduz

RESOLUTION AND REPORT

on

IMPLICATIONS FOR THE EEA OF EU POST-CRISIS FINANCIAL REFORM

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RESOLUTION

on

IMPLICATIONS FOR THE EEA OF EU POST-CRISIS FINANCIAL REFORM

The Consultative Committee of the European Economic Area (EEA CC):

A. Noting the impact of the financial crisis starting in 2008 on the Internal Market in financial services in which the EEA EFTA States participate fully;

B. Noting the need for post-crisis financial reform in the EU and the relevance and implications of this for the EEA;

C. Having regard to the de Larosière Report on Financial Supervision in the EU (February 2009) and the subsequent European Commission Communications on "Driving European Recovery" (March 2009) and "European Financial Supervision" (May 2009);

D. Having regard to the proposals by the European Commission (September 2009) for a new structure for financial supervision in the EU, including a new European Systemic Risk Board at the macro prudential level and three supervisory Authorities at the micro prudential level;

E. Having regard to the revised Deposit Guarantee Scheme (March 2009) and the current review of the Scheme;

F. Having regard to the Commission proposal for cross-border crisis management in the banking sector (October 2009);

G. Noting the input by the EEA EFTA States and EEA EFTA stakeholders to the above proposals and processes;

H. Noting the EESC opinions and EFTA Consultative Committee deliberations on post-crisis financial reform;

1. underlines the specific need for regulatory and supervisory reform in the financial sector as a result of the current economic and financial crisis. This needs to involve governments and relevant financial authorities in close cooperation with social partners and civil society organisations;

2. emphasises the obvious implications of post-crisis financial reform for the EEA EFTA States and calls for closer EU-EEA EFTA cooperation to fill regulatory gaps and to create a supervisory system which is better matched with the already high level of integration in the EEA. This needs to include discussions at the political level down on the possible challenges for the

EEA cooperation of more wide-reaching EU proposals including possible new institutions and more integration between Member States;

3. reiterates that the EEA EFTA States are fully integrated into the EU financial markets through the EEA Agreement and that their involvement in new EEA relevant developments is required to achieve a well-functioning Internal Market in financial services;

4. calls on all 30 EEA Member States to set aside the necessary resources to deal with the likely increase in financial legislation, and calls on the relevant EEA authorities to ensure that new EEA relevant legislation is incorporated into the EEA Agreement in a timely fashion;

5. underlines that also the EEA social partners and civil society have a role to play to help market participants, consumers, employers and employees to adapt to new developments in the financial sector;

6. underlines the importance of continued EEA EFTA involvement in the shaping of new EEA relevant financial legislation through participation in Commission committees and working groups. It is important that the EEA EFTA States use their observer status to its fullest and that the EU side recognises the special role of the EEA EFTA States in policy-shaping under the EEA Agreement;

7. underlines the importance of appropriate consideration of the traditional close relationship of some EEA-members (e.g. Liechtenstein) to third countries (e.g. Switzerland);

8. welcomes, with regard to financial supervision, the European Commission proposals for a new European Systemic Risk Board (ESRB) at the macro prudent level and the three European Supervisory Authorities (ESAs) at the micro prudent level;

9. underlines the importance of appropriate participation of European social partners, including EEA EFTA social partner representatives, in stakeholder groups proposed under both the ESRB and the ESAs. It is important that the stakeholder groups get secretarial support, that their opinions and advice are made public, and that they can follow the work of the supervisory bodies on a continuous basis;

10. welcomes the efforts by the EEA EFTA States to gain support in the EU for the importance of EEA EFTA observer participation in the EU new supervisory structure, arguing correctly that this is necessary to achieve the best possible coordination within the EEA and a well-functioning Internal Market in financial services;

11. welcomes, therefore, the fact that the Commission in its proposals on the ESAs opened up for EEA EFTA observer participation and that this gained support in the Council. The EEA Consultative Committee now urges the European Parliament to uphold this provision;

12. regrets the fact that the Commission in its proposal on the ESRB only included a reference to the EEA EFTA States in the explanatory memorandum but not in the legislative text itself. The Committee welcomes the fact that the Council in its deliberations included a provision on EEA EFTA observer participation in the legislative text and now urges the European Parliament to support this provision;

13. recognises that the participation of the EEA EFTA States in a possible new supervisory structure might still pose some challenges which need to be addressed by the relevant EEA authorities. The Committee especially calls for a swift clarification on the implications for the EEA EFTA States, if any, of possible new Authority powers, such as making binding decisions on individual firms. The question is whether the EEA EFTA States can accept such decisions made by institutions of which they are not fully part;

14. questions, while recognising the need for urgent action due to the crisis, the speed with which the Revised Directive on a Deposit Guarantee Scheme was adopted, without the possibility for a normal consultation procedure and for stakeholders, like the EEA EFTA States, to sufficiently participate in the shaping of the new proposal;

15. underlines especially therefore the importance of the current review of the Scheme to which all 30 EEA Member States and EEA stakeholders can and should provide input. It is important that the EEA relevance of this Directive and the EEA EFTA input to the review is recognised when the conclusions are published, and that the Commission, if it chooses to present further legislative proposals (e.g. further revision of the Directive), takes this into consideration;

16. welcomes the public consultation launched by the European Commission on a new cross-border crisis management regime in the banking sector;

17. calls on the EEA Council

    a. to put post-crisis financial reform and its implications for the EEA on its agenda, to ensure that the challenges linked to this is discussed at the highest political level in the EEA;
    b. to recognise the importance of social partners and civil society in post-crisis reform efforts;
    c. to reiterate the EEA relevance of the EU's post-crisis financial reform and underline the importance of increased EEA cooperation in this field; and
    d. to discuss in more detail the specific challenges raised above, such as EEA EFTA observer participation in the ESRB and in the ESAs, possible future challenges linked to this, and the review of the Deposit Guarantee Scheme.

REPORT

on

IMPLICATIONS FOR THE EEA OF EU POST-CRISIS FINANCIAL REFORM

I INTRODUCTION

1. The point of departure for this report is the financial and economic crisis starting in 2008. Due to the high level of interdependence between both markets and countries, what started out as a crisis in the financial sector quickly escalated into a wider economic crisis which also had a huge impact on labour markets and social relations, presenting new challenges in terms of economic governance.

2. While fully recognising this wider reach, this EEA Consultative Committee (EEA CC) report focuses exclusively on the financial crisis and more specifically on the European context and the implications for the EEA of post-crisis financial reform in the EU.

3. The latter has centred on improved supervision and regulation. As a result of the crisis, regulatory gaps were identified and a more solid framework of rules and harmonised implementation was called for. It was also underlined that the relatively weak and still nationally based supervisory system would need to be enforced and better matched with the already high level of integration in the financial sector. The EU reform was initiated by the recommendations given in the de Larosière report[1], which were broadly endorsed by the Commission and EU leaders and have since laid the ground for EU policy in the financial sector.

4. For the EEA EFTA States, EEA relevant developments in the financial sector had since the entry into force of the EEA Agreement seemed relatively unproblematic and had seldom caused delays or problems in terms of incorporation/implementation or homogeneity in the EEA. As can be seen below, the EEA EFTA States have also had a well established practice of involvement in the EU decision shaping within financial services.

5. However, with the crisis and the immediate policy responses to it, it quickly became clear that the extensive post-crisis financial reform in the EU would also have considerable impact on the EEA EFTA States. This paper will look at three issues of specific interest, relevance, and possible challenge to the EEA EFTA States and the EEA cooperation: a new architecture for financial supervision in the EU; revision of the Deposit Guarantee Scheme; and new initiatives with regard to cross-border crisis management in the banking sector.

6. The EEA social partners and civil society organisations have commented extensively on post-crisis financial reform in the EU. The European Economic and

[1] Report by the High-Level Group on Financial Supervision in the EU, chaired by Jacques de Larosière, 25 February 2009

Social Committee (EESC) has produced opinions on the de Larosière report and on the new supervisory bodies, and the EFTA Consultative Committee has in its deliberations focused on the impact of new EU initiatives on the EEA EFTA States.

II CURRENT EU DECISION MAKING IN THE FINANCIAL SECTOR

7. The so-called "Lamfalussy" structure[2] is a 4-level approach to decision making and legislation which initially had the aim to ensure that EU laws on financial services could be adopted as quickly as possible and be implemented in a way tailored to changing market realities. The approach includes thorough consultation throughout the process and cooperation between financial regulators and supervisors.

8. The system has been functioning since 2001 within the securities sector and since 2003 in the banking and insurance sector. Important EU and EEA relevant legislation within financial services has been developed and adopted through the "Lamfalussy" procedure. While reviews evaluating its efficiency show positive results, the EEA Consultative Committee believes more could have been done to improve the quality of legislation, accelerate the legislative process and encourage regulatory and supervisory convergence within Europe. At the same time, the Committee recognises that the "Lamfalussy" approach has provided a venue for constructive involvement in new EU financial sector initiatives for the EEA EFTA States.

4 level "Lamfalussy" approach:

Level 1:	Co-decision between Council and European Parliament: - Framework directives and regulations
Level 2:	Commission Comitology Committees: - Adoption of implementing measures
Level 3:	Committees of Supervisors: - Advise to the Commission on implementing measures
Level 4:	Commission: - Enforce legislation through infringement procedures

Current EEA EFTA participation in policy shaping and decision making

9. The EEA EFTA States formally participate as observers in Level 2 and Level 3 of the "Lamfalussy" process and thereby have a unique possibility to influence EU legislative proposals at an early stage.

10. Through the EEA agreement EEA EFTA representatives have access as observers to Commission expert and comitology committees in all fields related to the

[2] The current structure of decision making in the EU with regard to financial legislation is named after Baron Lamfalussy who chaired a committee of "wise men" which delivered their conclusions and recommendations in 2001.

internal market. The **Level 2 Committees** within financial services in banking, insurance and securities are examples of such committees in which EEA EFTA representatives give input to EU legislative proposals and implementing measures. EEA EFTA experts also participate in working groups established under these Committees where appropriate. While having no voting rights, the fact that EEA EFTA representative can participate in these groupings still constitutes a very important part of the overall EEA cooperation, and depending on the preparation and input made, can provide the EEA EFTA side with influence. In this context it is not only important to participate in as many committees and working groups as possible (quantity) but more so to also ensure that the people with expertise attend and that they are well prepared with the mandate to speak with authority on new proposals (quality). From the EU side, it is important that the EEA EFTA observer status is viewed as full participation (except for the voting rights) and that EEA EFTA input is considered as important as input from the EU Member States.[3]

11. Also at **Level 3** of the "Lamfalussy" procedure, the regular and substantial EEA EFTA participation in the Supervisory Committees has made possibilities for influence within this sector particularly efficient, and they have been used to their full potential. These committees are independent from the Commission and are currently financed outside the EU budget, and the EEA EFTA financial supervisory authorities have contributed directly to these committees' budgets since their establishment in 2001 and 2003 respectively. With proposals currently on the table (see below) to transform the Level 3 Committees into new EU supervisory authorities with increased powers and resources, it will be important for the EEA EFTA States to ensure that their participation is ensured also in the new authorities.

<u>Examples of EEA EFTA observer participation in the "Lamfalussy" procedure:</u>

Level 2: EEA EFTA participation in Commission Comitology Committees:
- – European Banking Committee (EBC)
- – European Insurance and Occupational Pensions Committee (EIOPC)
- – European Securities Committee (ESC)
- – European Financial Conglomerates Committee (EFCC)
- \+ participation of experts in relevant underlying working groups

Level 3: EEA EFTA participation in advisory committees:
- – Committee of European Banking Supervisors (CEBS)
- – Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS)
- – Committee of European Securities Regulators (CESR)

[3] The European Commission recently published a proposal on possible changes to the comitology procedure (COM(2010) 83 final). The EEA EFTA participation is not mentioned specifically in the document, but it will be important for the EEA EFTA States to monitor new developments and analyse what the impact might be of possible changes (if any) to the Level 2 Committees in the financial sector. It should be noted that this is not only a concern for the EEA EFTA States, but as much an issue for the EU Member States who will be careful not to lose their influence over the existing comitology procedure.

12. With regard to EEA EFTA participation in EU policy shaping, the **EFTA Working Group (WG) on Financial Services** should also be mentioned. This group, which includes experts from EFTA ministries of finance, financial supervisory authorities, and central banks, follows EU processes from the "pre-pipeline" stage (Commission communications and preliminary discussions) to adopted legal acts and provides input to the EU through written comments. The Commission is regularly invited to the Working Group meetings to present new legislative initiatives and hear the EEA EFTA States' view on these. This is not formally required under the EEA Agreement but provides an efficient platform for discussion between EU and EEA EFTA officials.

13. Finally, at the political level, the four EFTA ministers of finance meet in the **EFTA Economic Committee** and once a year (every autumn) informally with their EU colleagues in the margins of the European Economic and Financial Affairs Council (ECOFIN). The issues discussed in this forum are more of a macro economic character and often go beyond the EEA context since the Committee includes all four EFTA States (including non-EEA member Switzerland). The meeting provides the opportunity to exchange views and cooperate with EU colleagues, and possibly influence EU decisions at the highest level. This has been specifically important during the current crisis and the ongoing post-crisis reform process. In 2008 the prepared topic of discussion was sovereign wealth funds, while, however, discussion quickly turned to the financial crisis and the critical situation of Iceland. In 2009, the meeting focused on exit strategies for sustainability of public finances. For 2010, the topic is still to be decided.

III POST-CRISIS REFORM AND IMPLICATIONS FOR THE EEA

14. For the EEA EFTA States, EEA relevant developments in the financial sector seemed relatively unproblematic before the crisis and have seldom caused delays in terms of incorporation and implementation of EEA relevant legislation.

15. One reason for this might be the relatively advanced level of financial regulation and supervision in the Nordic region since the banking crisis there in the early 90s. The high level of integration in the Nordic market is also linked to the fact that EU legislation within banking to a large extent has been based on already agreed principles from the Basel Committee under the International Bank of Settlements, where Sweden is a member. In certain cases the Nordic markets have through the Basel processes adapted to these international principles in advance of the EU process. This is of course also the case for Switzerland (which is one of the main actors in the Basel processes) and for Liechtenstein (which has one of the highest implementation rates of all EEA-30 countries in respect of financial legislation).

16. However, the effects of the global financial crisis exposed important shortcomings in the regulatory and supervisory framework in the single market and underlined the need for considerable reform. Short-comings were not only evident in the EU, but, with Iceland facing a specifically devastating banking crisis, were obviously having repercussions throughout the European Economic Area.

17. It became clear that post-crisis financial reform in the EU would have considerable impact also on the EEA EFTA States. First, post-crisis reform will most likely increase the volume of new EEA relevant legislation and thus require increased

human resources both by national authorities (incorporation into the EEA Agreement, national implementation…) and market participants (adaptation). This is something the EEA EFTA States, like their EU partners, now need to be prepared for.

18. Furthermore, a more profound challenge in an EEA context might be the content and scope of new legislation. It will most likely be more wide-reaching, establish new institutions, and lead to more integration between Member States. The question is then what this will mean for EEA EFTA involvement and participation and whether more EU integration, especially new cross-border institutions and regimes, will challenge the scope of the EEA Agreement.

19. With the EEA EFTA States thoroughly integrated into the EU financial markets through the EEA Agreement, it will be important that urgent reform measures in the EU reflect not only the interests of EU 27, but of EEA 30.

20. Below, the EEA Consultative Committee focuses on three issues that could pose specific challenges for the EEA cooperation in the financial sector and where specific attention is needed from the relevant EEA authorities in the coming months. The Committee also recognises the importance of other elements of post-crisis financial reform, such as Credit Rating Agencies and Alternative Investment Fund Managers, but has here chosen to focus on three issues of specific EEA importance: a new EU architecture for financial supervision; a revised deposit guarantee scheme; and cross-border crisis management in the banking sector.

IV NEW EU ARCHITECTURE FOR FINANCIAL SUPERVISION

21. One of the main EU initiatives in response to the crisis has been to propose a new EU architecture for financial supervision by 1) *adding a layer of supervision at the macro prudential level* through the establishment of a European Systemic Risk Board (ESRB), and 2) *strengthening the European financial supervision at the micro prudential level* (individual firms) by transforming the previous Level 3 Committees into EU Authorities with extended powers. A key question for the EEA EFTA States is the form in which their active participation in, and access to the current EU supervisory system as described above will continue in a possible new and more formalised structure. Before looking at how the EEA EFTA States have worked to ensure continued EEA EFTA participation in a possible new EU architecture for financial supervision, the below text will briefly touch upon the content of the European Commission proposals, and also look in more detail at the EESC's comments on these.

- EU Systemic Risk Board (ESRB) - Macro prudential level
  - A new level of supervision linked to the European Central Bank and the European System of Central Banks (ESCB)
  - Advisory board aiming to safe-guard financial stability for the EU economy

- 3 EU Supervisory Authorities (ESAs) - Micro prudential level
  - Former Level 3 Committees transformed into EU Authorities with increased powers and resources
  - Strengthening of supervision of individual firms operating cross border

Time line of EU proposals and decision making so far:

- Commission preparatory stage ("pre-pipeline")
  - Feb 09: De Larosière Report on Financial Supervision
  - March 09 : Communication "Driving European Recovery"[4]
  - May 09: Communication "European Financial Supervision"[5]
  - **Sept 09**: **Adoption of proposals for ESRB and ESAs[6]**
- Co-decision between Council and European Parliament ("pipeline")
  - Oct-Dec 09: Council discussions – agreement on compromise
  - Jan - July 10?: Parliament discussions towards EP agreement
- Adopted EU regulations
  - July 10?: Final adoption by Parliament and Council?
  - 2011 ? : Entry into force

ESRB – role and challenges

22. Based on the European Commission proposal the ESRB is not meant to be a legal entity within the EU and is foreseen to be an advisory body consisting mainly of Governors of the EU National Central Banks. The Commission suggests that the ESRB should be responsible for:

- assessing and preventing potential risks to financial stability in the EU;
- enhancing the effectiveness of early warning mechanisms;
- improving the interaction between micro- and macro-prudential analysis; and
- allowing for risk assessments to be translated into action by the relevant authorities.

The ESRB should also cooperate closely with the IMF and the Financial Stability Board in order to reinforce international financial stability and cooperation.

23. The ESRB is foreseen to issue recommendations and early warnings to Member States and to the European Supervisory Authorities. The challenge/difficulty with such a system could be the extreme sensitivity of the information exchange as the markets will react immediately to any news leaked. The question is how to ensure a frank exchange of information. The crisis has shown that in emergency situations the Member States tend first to act nationally to secure their domestic situation before going out to their EU friends to inform and find a solution.

[4] European Commission Communication for the Spring Council on Driving European Recovery, COM(2009) 114 final

[5] European Commission Communication on European financial supervision, COM(2009) 252 final

[6] European Commission proposals 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, COM(2009) 499 final; a Regulation of the European Parliament and of the Council establishing a European Banking Authority, COM(2009) 501 final; a Regulation of the European Parliament and of the Council establishing a European Insurance and Occupational Pensions Authority, COM(2009) 502 final; and a Regulation of the European Parliament and of the Council establishing a European Securities and Markets Authority, COM(2009) 503 final.

24. Another question raised is how to avoid the Board just to be a talk club since their recommendations and warnings will not be binding on the EU Member States. The principle is that Member States will have to "comply" or "explain" to the recommendations and early warnings. In the case of no compliance and no significant action, the ESRB would have the power to publish its recommendation or warnings.

ESAs – role and challenges

25. Based on the European Commission proposal, the ESAs are foreseen to take over all of the functions of the prior Level 3 Committees and in addition have certain extra competences and increased resources. The Commission proposes among others that the new Authorities should:

- develop an EU rulebook of technical standards;
- resolve cases of disagreement between national supervisors where legislation requires them to co-operate or to agree;
- contribute to ensuring consistent application of technical Community rules including through peer reviews; and
- ensure a coordinating role in emergency situations.

26. The European Securities and Markets Authority would also have to exercise direct supervision powers for credit rating agencies.

27. The former Level 3 Committees had only advisory powers and could only issue non-binding guidelines and recommendations. The new Authorities will, if the Commission's proposals are not diluted in Council and Parliament, be able to make binding decisions in a crisis situation. However, these binding decisions would have to be endorsed by the Commission.

EESC input

28. In an opinion on the de Larosière report[7], the EESC discussed the reasons for the financial and economic crisis, regulation of the financial market, and supervisory arrangements. One of its statements was: "The EESC also thinks that supervision is key to preventing the occurrence of another financial crisis. But supervision requires rules. Therefore the proposals for amending and strengthening rules .... are considered equally important."

29. In its opinion[8] on the four Regulations for financial supervision proposed by the Commission the EESC apart from more general comments on as well the micro as the macro supervision specifically discussed the proposed special stakeholder groups.

Stakeholder groups

30. The text for the ESRB stakeholder group ought to mention not only financial sector representatives but that they should come from both the employers and trade unions. Moreover, as the systemic risks concern not only the financial market but all of

[7] European Economic and Social Committee Opinion ECO/259 de Larosière Report, 30 September 2009
[8] European Economic and Social Committee Opinion ECO/268 Marcro and micro prudential supervision, 22 January 2010

the economy, the EESC underlines that also employers and trade unions at European level ought to be consulted. If this proposal from the EESC is accepted, the EEA EFTA social partners, through ETUC and Businesseurope, would also have access to these stakeholder groups.

31. In the Commission proposal nothing is said on the form of these consultations and how often they should take place. This is needed as the proposed article states that these consultations "shall" take place. To use "where appropriate" also seems too vague.

32. The stakeholder groups for the three Authorities should, according to the Commission, consist of employers and employees in the three respective parts of the financial market as well as consumers and users of the services of the sector. The EESC underlines that the proposed 30 representatives should be evenly distributed between all these types of representatives.

33. The stakeholder groups for the three Authorities are proposed to meet at least twice a year. They may submit opinions and advice and should get secretarial support. Opinions and advice should be made public. The EESC notes that there is a risk that their work will be concentrated only to those two meetings. They instead ought to have the option of following the work of the Authority in question permanently.

More specific comments on the ESRB

34. The EESC notes that the proposal for an ESRB lacks a definition of systemic risks. This concept needs to be discussed in public, not just behind closed doors in the new ESRB.

35. The EESC also points out that the ESRB must have a clear mandate to act when financial stability is at risk and that, in order to guarantee this in the regulation, the wording of some passages should be reconsidered:

- The different versions should be streamlined using the concept of "supervision".
- The warnings and recommendations from the ESRB should only be transmitted to the Council as in Article 16(3) and not go through the Council as in recital 9, which could reduce its independence.
- Whether or not action is compulsory after ESRB recommendations must be dependent on where the competence for the rules lies: with the Member States or with the EU.
- The ESRB (Article 3) is said to "contribute to a smooth functioning of the internal market". The ESRB's remit is the risks involved in the financial market but here it seems to have been given a wider role.

36. The General Board of the ESRB will include the 29 members of the ECB General Council. This connection between the ESCB (European System of Central Banks) and the new ESRB is advocated by the EESC as it means that all 27 Member States are involved. For its Steering Committee the EESC recommends five members from the ECB General Council, which could make it easier to have a better geographical distribution, a distribution between small and big countries and between countries inside and outside the eurozone.

37. The Parliament is mentioned only as the ESRB has to give reports to the Parliament and the Council at least once a year. Under article 20 the Council shall after

three years examine the Regulation on the ESRB. The Parliament should of course also be involved in this.

More specific comments on the European Supervisory Authorities

38. The main activities of the three Authorities will concern existing rules, streamlining the practices of the national authorities, mainly through guidelines and recommendations. The authorities will also be given a mandate to develop new technical standards.

39. Proposals for new technical standards could not have the form of Directives, but only of Regulations and Decisions. If technical standards are defined as being non-political, the EESC points to the fact that also Regulations should be excluded. Technical standards should be directed only at the national supervisory bodies and the financial institutions, not at the Member States. They should therefore take the form of Decisions, and not Regulations or Directives. The latter are reserved for political rules proposed by the Commission.

40. The supervision carried out by the European Authorities is directed at the national supervisory authorities, not directly at the financial market participants. The exception to this is when a national authority does not follow the recommendations (articles 9 and 11). A decision directed at the financial market participants will then according to the Commission proposal finally be taken by the European Authority.

41. There is also a description of emergency situations where the European Authority may take such decisions without involving the Commission. The task of deciding whether there is an emergency situation should nevertheless rest with the Council. The EESC is in agreement with this as the reasons for declaring emergency situations must arise from the markets in general. If on the other hand an individual financial institution is in an emergency situation this must be a task for the national supervisory body.

42. Article 23 concerns safeguards for a government if it considers that the new technical standards have fiscal effects. These safeguards seem adequate although technical standards hardly ever have fiscal effects.

43. The EESC proposes that a national authority should give its consent before new financial instruments can be introduced, as is the case in Spain. As this is not in place in other Member States an initial step would be to scrutinise instruments used in countries other than Spain. The Commission should therefore amend the Regulation on the European Securities and Markets Authority with a Regulation for such a task.

44. The field of action for the Banking Authority should, in the EESC's view, be as wide as possible. A level playing field for all types of financial institutions should be a general objective. The EESC would like to see a new discussion on definitions in order to include experiences from the financial crisis to make them as wide as possible.

45. According to article 20(3) the Authorities may use confidential information received from the financial institutions only for the duties directly assigned to them by the Regulations. This statement ought to be complemented by a rule on how confidentiality must be protected.

46. Only the heads of the national authorities will have voting rights on the Board of Supervisors. There is a risk with a Board of Supervisors supervising themselves. The independence of the Chairperson is crucial and he/she should have voting rights. Just as crucial is openness to and the influence of the stakeholder group. It is also necessary to operate transparently by making the decisions of the Authorities public.

47. If the activities of the Authorities start in 2011 it will take more than two years before they are fully active. It is necessary to speed up this expansion in order to quickly handle all the problems revealed during the crisis.

EEA EFTA input

48. The main focus of the EEA EFTA States and relevant EEA EFTA stakeholders with regard to the possible new architecture for financial supervision in the EU has been to ensure EEA EFTA observer participation in the new EU institutions. Bearing in mind the importance of this for a well functioning Internal Market in the finance sector, in which the EEA EFTA States are fully integrated, there has been a specific need to flag EEA EFTA interests vis-à-vis the EU on this.

49. Bearing in mind that the internal market is extended to the EEA EFTA one could ask why EEA EFTA authorities' participation in the new structure is not a self-evident issue. It should be in the interest of the EU side to include the EEA EFTA States to achieve the best possible coordination within the EEA; if they are excluded from any of these structures, the new system of supervision would not ensure the necessary flow of information and level of transparency which the EU is striving for, with the risk of making the Internal Market in financial services less efficient.

50. At the **"pre-pipeline"** stage, which is the Commission process before adoption of a proposal, the first informal contact was taken by the EFTA Consultative Committee inviting the Commission to make a presentation in their meeting in March 2009. This was just after the publication of the European Commission Communication "Driving Economic Recovery" (March 2009) and in the middle of the Commission's preparatory work for new proposals. As an example of the value of such informal and early contacts, it transpired when talking to the EU official at the EFTA CC meeting that it was not self evident that there would be provisions allowing the EEA EFTA States to participate in the new supervisory bodies. That triggered the need for an EFTA Comment in April 2009 underlining the need for the EEA EFTA States to be included in both structures as observers[9]. After the Second Commission Communication on "European Financial Supervision" (May 2009), where it was outlined that we would indeed be allowed into the new Authorities as observers, but where there was no mention of our participation in the ESRB, a new comment was made and submitted in July 2009, calling for EEA EFTA participation also in the ESRB[10].

[9] EEA EFTA Comment on the proposals concerning financial supervision made in the de Larosière report published on 25 February 2009 and in the Commission Communication of 4 March 2009, Ref. 1090920
[10] EEA EFTA Comment to the Communication from the Commission of 27 May 2009 on European Financial Supervision, Ref. 1092577

51. Following this, the actual proposal from the Commission in September 2009 on the ESRB mentioned the EEA EFTA States in its explanatory memorandum[11], but did not include EEA EFTA participation in the regulation itself. More efforts were thus needed to bring this point across. With regard to the ESAs, the Commission proposals confirmed what had already been expressed in the May Communication and allowed for EEA EFTA participation as observers in all three Authorities[12]. This showed that the EEA EFTA efforts to influence the content of the EU proposals on this specific point had born fruit. It possibly also reflected the fact that the new system was a continuation of the Level 3 Committees in which the EEA EFTA States were already participating. It should be noted that the Commission proposals also contained certain restrictions as to the EEA EFTA authorities' possibility to attend any discussions in the new ESAs relating to individual financial institutions except where there is a direct interest. In its comments from July 2009, the EEA EFTA States had underlined the importance of not excluding relevant EEA EFTA supervisory authorities from discussions on specific institutions for which the actual EEA EFTA State may be the home or host state.

52. At the **"pipe line stage",** which is when Commission proposals enter co-decision (Council and Parliament), the Commission was invited to hold a presentation and exchange of views with the EFTA Standing Committee (EFTA Ambassadors to the EU) and EFTA Working Group on Financial Services. Based on the above, the focus was on possible EEA EFTA participation in the ESRB. During the Councils' treatment of the proposals, discussions with the Presidency were undertaken in order to try to have included an article allowing the EEA EFTA States' Central Banks to participate in the ESRB as observers. As a result, the Council Compromise text of 20 October 2009 included an article (12 a) providing for possible EEA EFTA participation under some restrictions[13], which showed that continued EEA EFTA efforts ultimately had an effect. The discussions are now ongoing in the European Parliament and the pressure will be maintained from the EEA EFTA side to ensure that the paragraph stays in the final text[14].

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[11] See paragraph 6.2 of the Explanatory Memorandum: "…This proposal being based on Article 95 of the Treaty, it is relevant for the European Economic Area (EEA). The modalities of cooperation between the EFTA States participating in the EEA and the ESRB will be discussed in the EEA Joint Committee."

[12] See Article 61 on "Participation of third countries" in all three proposals which stipulates that participation in the work of the Authority shall be open to countries which are not members of the European Union and which have concluded agreements with the Community whereby they have adopted and are applying Community law in the area of competence of the Authority (this applies to the EEA EFTA States). The article further calls for arrangements to be made with regard to the involvement of these countries in the work of the Authority, including provisions relating to financial contributions, to staff, and to representation as an observer on the Board of Supervisors.

[13] The proposed Article 12a stipulates that 1. "Subject to the conditions laid down in paragraph 2, participation in the work of the ESRB shall be open to authorities from the EEA States.", and 2. "Under the relevant provisions of the EEA agreement, arrangements shall be made specifying, in particular, the nature, scope and procedural aspects of the involvement of these countries in the work of the ESRB. These arrangements may provide for representation, on an ad-hoc basis, as an observer, on the General Board and the Advisory Technical Committee, but shall ensure that these countries do not attend any discussions relating to individual financial market participants, except where there is a direct interest."

[14] The EP Committee on Economic and Monetary Affairs has in its draft report from 10 February 2010 proposed that the Advisory Committee referred to in Article 12 of the Commission proposal (and in the new Article 12a by the Council) should only consist of nine experts, as opposed to one from each Member State (and possibly EEA EFTA observers), and that it should be renamed the Scientific Committee. On the other hand, the EP Committee has proposed a new Article 9(3)(b) in which it stipulates that "where appropriate, and on an ad hoc basis, one high-level representative from the European Economic Area may be invited to attend the meetings of the General Board".

53. The EEA Consultative Committee underlines the importance of continued involvement and participation of the EEA EFTA States in the financial sector to ensure a well functioning internal market in financial services. The Committee fully supports the efforts by the EEA EFTA States so far and hopes this report and resolution will add to the current discussions on the EU side on this issue.

54. More long-term, the EEA Consultative Committee would like to point to some challenges linked to the possible EEA EFTA participation in the new EU architecture on financial supervision. With regard to the ESRB, legislative proposals are handled within the Commission by the Directorate for Economic and Financial Affairs where there is no previous tradition for EEA EFTA cooperation as monetary policy is outside the EEA Agreement. Also, considering the link between the ESRB and the ECB, the latter operate outside the scope of the EEA Agreement with no formal participation of the EEA EFTA States. However, while the decisions by the ESRB might affect the internal market and thus the EEA EFTA States, from an institutional point of view, the ESRB, as a purely advisory body and not a legal entity within the EU, should not pose a challenge to the two-pillar structure under the EEA Agreement.

55. The increased powers of the new Authorities could pose a potential challenge to the scope of the EEA Agreement. Providing the Commission proposals are not diluted, the ESAs will be able to make binding decisions on individual firms in a crisis situation. As the EEA EFTA States as observers would not have voting rights in the new Authorities it is a question whether the binding decisions would be acceptable to the EEA EFTA States. Furthermore, any uncertainty on this topic may be a real or expected hindrance for cross-border business establishment and expansion and increase the cost of such business. A swift clarification on the implications of such new Authority powers, if any, and whether or not the EEA EFTA States can accept such decisions made by institutions of which they are not fully part, is therefore required.

V REVISED DEPOSIT GUARANTEE SCHEME

56. The revision of the European Deposit Guarantee Scheme[15] was the first concrete legislative step taken by the EU in response to the financial crisis.

57. The Deposit Guarantee Scheme became central in the political debate in September/October 2008 when the crisis struck, as the different EU countries needed to take quick action to keep depositors' confidence in the banking sector and avoid a run on their banks. Questions arose particularly with regard to banks operating cross-border and how depositors with savings in a branch of such banks would be covered in comparison to those with money in the mother company or a subsidiary. Based on the directive from 1994, the minimum coverage in the EU was €20,000 and it was up to each EU Member State to decide whether it would keep this or set the limit higher.

58. In the countries with higher limits, like Norway, this led to so-called topping up arrangements where for a subsidiary the guarantee scheme of the mother company would cover the first €20,000 and the host guarantee scheme would cover the rest. This

[15] Directive 94/19/EEC: EEA relevant and incorporated into the EEA Agreement through EEA Joint Decision 18/94

could be confusing for depositors and the time it took for depositors of failed banks to get their money could be frustratingly long. At the EU level there were also examples of Member States competing among themselves declaring that their governments would take on responsibility for full coverage for the depositors of their national banks in a way which could lead to distortion of competition and breach the principles of equal treatment within the Internal Market.

59. The result was the revised Deposit Guarantee Scheme which was adopted in March 2009 after an extremely fast decision-making process, stretching only six months and not including normal consultation procedures (e.g. impact assessment), and in many ways simply reacting to political pressure for a quick-fix solution.

60. After the Council made a recommendation for revision on 7 October 2008 the Commission followed up with a proposal for an amended directive a week later (!)[16]. This meant an almost non-existent "pre-pipeline" stage with little or no involvement of stakeholders including the EEA EFTA States.

61. The main element of the new proposal was to raise the minimum coverage from €20,000 to €50,000 for each deposit by 1 July 2009, and to €100,000 by the end of 2010, as well as to reduce payout delays from four months to one month. Like the initial Directive, the revised proposal was based on a minimum requirement approach which would give Member States certain flexibility with regard to adjustments.

62. However, in the Council discussions the issue of a level playing field was introduced and the initial Commission proposal for a minimum requirement was changed into a maximum harmonisation approach, meaning all Member States would eventually need to decide on a level of €100,000 with no margin for individual adjustments. This was included in the adopted Directive in March 2009[17].

63. As the proposal from the Commission was made extremely quickly, it was decided to undertake a review of the whole Scheme to look at other aspects like funding, exceptions from the scheme, application with regard to SMEs and local authorities, and how well-functioning the maximum harmonisation approach is. The conclusions of the review are expected during spring 2010 with possible proposals for legislation within the summer break.

EEA EFTA input

64. The Deposit Guarantees Scheme has been central throughout the EEA. The collapse of the Icelandic banks and the problems which occurred for depositors in branches of Icelandic banks particularly in the UK, Germany and the Netherlands, illustrated the weaknesses of the system.

[16] European Commission proposal for a Directive of the European Parliament and of the Council amending Directive 94/19/EC on Deposit Guarantee Schemes as regards the coverage level and the payout delay, COM(2008) 661 final, 15 October 2008

[17] Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on Deposit Guarantee Schemes as regards the coverage level and the payout delay (Text with EEA relevance)

65. Bearing in mind the importance of the issue for the whole of the EEA and for individual EEA EFTA States, the revision of the European Deposit Guarantee Scheme should in theory have been done with active EEA EFTA participation. However, looking back at the incredible speed at which the revision went through the EU, the EEA EFTA involvement in the policy shaping, which is foreseen under the EEA Agreement, was made very difficult. The EEA Consultative Committee regrets the fact that few possibilities for involvement were provided.

66. For Norway, the introduction of a maximum harmonisation approach has been particularly difficult because it is the only EEA country which previously and currently has a higher limit than €100,000 as a deposit guarantee (currently approx. €250,000). The EU side has so far not considered that Norway's particular situation is worth catering for in the new Directive, and if the revised Directive should be introduced into Norwegian law without amendments, the current Norwegian Deposit Guarantee Scheme would have to be reduced by more than half. This could cause political debate and will - quite correctly - be perceived by consumers as a negative lowering of existing standards and rights.

67. The main argument in favour of the new approach from the EU is that a maximum €100,000 limit would ensure a level playing field within the Internal Market and make void complicated topping up arrangements which during the crisis were perceived as confusing to depositors. Also, going beyond €100,000 could by many EU Member States be seen as too expensive, especially in countries where the standard of living and hence the level of deposits are relatively low. On this basis there seems to be little understanding in the EU for the Norwegian request for an exception to the new scheme. Norway on the other hand, argues that a Norwegian exception would not distort competition, neither in the Nordic market nor in the EEA, and that this was not a problem prior or during the crisis. With regard to the ongoing review of the Scheme, the Norwegian Ministry of Finance has submitted input and it will be important when the conclusions of the review are published to see whether this, and the consideration of the EEA context more generally, will be taken into account when or if the European Commission decides to present further legislative proposals.

68. Liechtenstein is one of the leaders within the EEA, when it comes to the implementation rate of EU-legislation. Especially the banking legislation is always fully and quickly implemented.

VI CROASS-BORDER CRISIS MANAGEMENT IN THE BANKING SECTOR

69. During the financial crisis, a number of governments had to take emergency action to stabilise banks. Without government intervention several banks would most likely have failed, potentially hugely damaging the EU economy with millions of citizens unable to access their bank accounts, core banking services and payment systems seriously disrupted, and other financial institutions dangerously destabilised.

70. However, governments acted under national law and the crisis exposed the lack of an effective framework for cross-border management in the banking sector. National governments seemed to lack tools for joint action and for fast and effective action. National governments were often faced with the choice of either bailing out a bank with public funds or allowing the whole business to collapse into insolvency.

71. National approaches differed, but broadly speaking authorities either used public money to bail out banks, or closed off a bank's assets within their territory and dealt with each entity rather than the cross-border group. This raised the risks of reduced confidence, competitive distortions, high bail-out costs carried by taxpayers and legal uncertainty. The events surrounding the failures of Fortis, Lehman Brothers and Icelandic banks illustrated how damaging the absence of an appropriate resolution framework was for financial stability of the EEA banking system.

72. The European Commission considers that action is needed to establish an EU framework for cross-border crisis management and there seems to be support for developing a resolution regime that would make sure all competent authorities could effectively coordinate their actions and have the necessary tools for intervening quickly to handle the failure of a bank[18]. This would also be considered an important complement to the new supervisory architecture.

73. For the Commission a cross-border crisis management regime is presented as having potential benefits for the society at large (a more stable and resilient financial system; continuity of vital banking services), for taxpayers (reduced need to bail out banks with public money), and for depositors and customers (more protection, and uninterrupted access to accounts).

74. In October 2009, the European Commission launched a public consultation on the form that such a new cross-border regime in the banking sector could take[19]. The first objective of the Commission with a new regime would be to ensure that all national supervisors have effective tools to identify problems in banks at an early stage and to intervene to restore the health of the institution or group or stop further decline. A second objective would be to make it possible for cross-border banks to fail without serious disruption to vital banking services or contagion to the financial system as a whole. The public consultation covered three areas on which it asked stakeholders to provide responses: early intervention, resolution, and insolvency.

75. The deadline for the consultation was 20 January 2010. Following this, the Commission organised a public hearing on 19 March 2010 to present the responses and discuss the issues further. Based on this, the Commission will consider what Community action might be needed. There will also be further public consultation on any legislative proposal that the Commission might present.

EEA EFTA input

76. Providing a new cross-border regime is established in the banking sector, this would be yet another example of further integration on the EU side in a policy area of huge relevance to the EEA EFTA States. The question is thus how the latter would be involved and participate in such a regime.

[18] This was underlined in the de Larosière Report, by the European Council in June 2009, and at the G20 Pittsburg summit on 25 September 2009.

[19] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the European Court of Justice and the European Central Bank: An Eu Framework for Cross-Border Crisis Management in the Banking Sector, COM(2009) 561 final

77. Input from EEA EFTA State institutions to the Commission consultation has come from the Central Bank of Norway and the Norwegian Ministry of Finance. Both institutions welcome the discussions on a framework for cross-border crisis management in the banking sector and the broad approach proposed for this by the European Commission. They agree that the financial crisis has illustrated the shortcomings of the current crisis management frameworks in Europe and that inadequate tool kits for crisis resolution at the domestic level and a strong tendency to favour national solutions in cross-border banking crises have led to uncoordinated crisis resolutions and large levels of public financial support to the banking sector. More cross-border cooperation throughout the EEA is thus important.

78. Since all EU banking legislation is implemented in full in Norway, as an EEA Member State, the input from the Norwegian institutions also underline especially the EEA context and relevance and importance of new initiatives for all 30 EEA Member States. They also refer to specific Norwegian experiences that could possibly be helpful in the process of finding better tools to avoid cross-border banking crises.

79. One such example is the fact that Norway for a long time has favoured a holding company approach to financial institutions and as a result most of its financial groups have fairly transparent organisational structures. Such an approach could possibly facilitate recovery and resolution by reducing the complexity and interconnectedness of group structures.

80. Both the Central Bank and the Ministry of Finance refer to discussions in the Basel Committee and underline the importance of connecting developments in this Committee with efforts to strengthen cross-border crisis management in the EU/EEA. With regard to early intervention tools, the new Basel proposal for a “capital conservation rule” could be a starting point for developing such early intervention triggers in the EEA. The Basel Committee’s efforts in the field of intra-group asset transfers should also be supported, and the discussions in the Basel Committee on threshold conditions should be connected to discussions in the EU/EEA.

81. With a relatively long consultation period and active participation and involvement by EEA EFTA stakeholders from the start in the discussions on a possible new framework for cross-border crisis management in the banking sector, the EEA Consultative Committee is hopeful that such a regime will indeed cover the entire EEA and ensure the necessary participation of the EEA EFTA States.