Commission Decision of 23 January 2009 establishing the Committee of European Banking Supervisors (Text with EEA relevance) (2009/78/EC) (repealed)

COMMISSION DECISION

of 23 January 2009

establishing the Committee of European Banking Supervisors

(Text with EEA relevance)

(2009/78/EC) (repealed)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Whereas:

(1) As part of the so-called Lamfalussy process, the Commission adopted Decision 2004/5/EC of 5 November 2003 establishing the Committee of European Banking Supervisors[(1)] (hereinafter the Committee). The Committee took up its duties on 1 January 2004, serving as an independent body for reflection, debate and advice of the Commission in the field of banking regulation and supervision.

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

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

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

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

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

(7) The composition of the Committee should reflect the organisation of banking supervision and should also take account of the role of central banks as regards the overall stability of the banking sector at national and Community level. The respective rights of the different categories of participants should be clearly identified. In particular, chairmanship and voting rights should be reserved to the competent supervisory authorities of each Member State. Participation in confidential discussions about individual supervised institutions should, where appropriate, be restricted to the competent supervisory authorities and to the central banks entrusted with specific operational responsibilities for supervision of the supervised institutions concerned.

(8) The Committee should serve as an independent advisory group of the Commission in the field of banking supervision.

(9) The Committee's mandate should cover the supervision of financial conglomerates. To avoid duplication of work, to prevent any inconsistencies, to keep the Committee abreast of progress, and to give it the opportunity to exchange information, the collaboration with the Committee of European Insurance and Occupational Pensions Supervisors in the supervision of financial conglomerates should be exercised in the Joint Committee on Financial Conglomerates.

(10) The Committee should also contribute to the common and uniform day-to-day implementation of Community legislation and its consistent application by the supervisory authorities.

(11) The Committee does not have any regulatory powers at Community level. It should carry out peer reviews, promote best practices and issue non-binding guidelines, recommendations and standards in order to increase convergence across the Community.

(12) Enhanced bilateral and multilateral supervisory cooperation depends on the mutual understanding and trust between supervisory authorities. The Committee should contribute to the improvement of such cooperation.

(13) The Committee should also foster supervisory convergence across the Community. In order to be more specific about this objective, an indicative and open-ended list of tasks to be carried out by the Committee should be established.

(14) In order to resolve disputes of a cross-border nature between supervisory authorities, in particular within colleges of supervisors, a voluntary and non-binding mediation mechanism should be provided by the Committee.

(15) To benefit from the expertise acquired by the Committee and without prejudice to the powers of supervisory authorities, the supervisory authorities should be able to refer matters to the Committee with a view to obtaining its non-binding opinion.

(16) The exchange of information between the supervisory authorities is fundamental to their functions. It is central for the efficient supervision of banking groups and for financial stability. Whilst the banking legislation imposes clear legal obligations on supervisory authorities to cooperate and exchange information, the Committee should facilitate practical day-to-day exchange of information between them, subject to relevant confidentiality provisions set out in the applicable legislation.

(17) In order to reduce the duplication of supervisory tasks and thereby streamline the supervisory process as well as reduce the burden imposed on banking groups, the Committee should facilitate the delegation of tasks between supervisory authorities, in particular in cases specified in the relevant legislation.

(18) With a view to fostering convergence and consistency across the colleges of supervisors and thereby ensuring a level playing field, the Committee should monitor their functioning without constraining the independence of the members of the college.

(19) Quality, comparability and consistency of supervisory reporting are central to the cost-efficiency of Community supervisory arrangements and the compliance burden on cross-border institutions. The Committee should contribute to ensuring that overlap and duplication is eliminated and that the reporting data is comparable and of appropriate quality.

(20) Financial systems in the Community are closely linked and events in one Member State can have a significant impact on financial institutions and markets in other Member States. The continuing emergence of financial conglomerates and the blurring of distinctions between the activities of firms in the banking, securities and insurance sectors give rise to additional supervisory challenges at national and Community level. In order to safeguard financial stability, a system is needed at the level of the Committee, the Committee of European Securities Regulators and the Committee of European Insurance and Occupational Pensions Supervisors in order to identify potential risks, across borders and across sectors, at an early stage and, where necessary, inform the Commission and the other Committees. Furthermore, it is essential that the Committee ensures that finance ministries and national central banks of the Member States are informed. The Committee has its role to play in this respect by identifying risks in the banking sector and regularly reporting on the outcome to the Commission. The Council should also be informed of these assessments. The Committee should also cooperate with the European Parliament and provide it with periodic information on the situation in the banking sector. The Committee should not, in this context, disclose information on individual supervised entities.

(21) In order to adequately deal with cross-sector issues, the activities of the Committee should be coordinated with those of the Committee of European Securities Regulators, the Committee of European Insurance and Occupational Pensions Supervisors and the

Banking Supervision Committee of the European System of Central Banks. This is of particular importance in addressing possible cross-sectoral risks to financial stability.

(22) Given the globalisation of financial services and the increased importance of international standards, the Committee should also foster dialogue and cooperation with supervisors outside the Community.

(23) The accountability of the Committee towards the Community Institutions is of high importance and should be of a well established standard while respecting the independence of supervisors.

(24) The Committee should draw up its own rules of procedure and fully respect the prerogatives of the institutions and the institutional balance established by the Treaty. The enhanced framework of the activities of the Committee should be accompanied by improved working processes. To this end, if consensus cannot be reached, decisions should be taken by qualified majority corresponding to the rules set out in the Treaty.

(25) For reasons of legal security and clarity Decision 2004/5/EC should be repealed,

HAS DECIDED AS FOLLOWS:

(**1**) OJ L 3, 7.1.2004, p. 28.

(**2**) OJ L 79, 24.3.2005, p. 9.

(**3**) COM(2007) 727 final.

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

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

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

Status:
Point in time view as at 23/01/2009.

Changes to legislation:
There are currently no known outstanding effects for the Commission Decision of 23 January 2009 establishing the Committee of European Banking Supervisors (Text with EEA relevance) (2009/78/EC) (repealed), Introductory Text.