

Summary of replies received to the public consultation on the Commission
Communication of 27 May 2009 on European Financial Supervision

Submissions received

The total number of submissions received 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 (NB all submissions not containing a registration number for the submitting organisation have been classified as individual replies):

Public authorities:	13
Registered organisations:	37
Individuals:	48

A full list of contributors is provided in annex.

As a general remark, most contributions welcome the Communication and broadly support its conclusions, while several request more information about 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 in the Communication but also other supervisory and regulatory issues.

Submissions were received from ministries, central banks and supervisors in 7 Member States (for some Member States more than one submission was received from different public bodies). That does not take into account the Ecofin and European Council conclusions of 9 June and 18-19 June 2009 respectively, in which they recommended that a European Systemic Risk Board (ESRB) and a European System of Financial Supervisors (ESFS), comprising three new European Supervisory Authorities (ESAs), be established.

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. Contributions generally make suggestions or express concern on specific issues concerning the structure and the powers of the ESAs, such as the voting procedures and independence; several submissions stress the need to clarify the Authorities' powers to settle disputes and to act in emergency situations, while some of them oppose such powers.

On *macro-supervision*, none of the responses opposes the proposed ESRB but while some replies strongly support the proposal, others support it conditionally upon further details being provided. Contributions are divided on the question whether the ESRB should be chaired by the ECB, or whether the Chair should be elected. Further comments suggest that warnings and recommendations should not be channelled to the relevant addressees via the Council, but rather through the new ESAs.

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 to 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 for the three ESAs. It underlines the need for the ESRB to obtain prudential information 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 Steering Committee, and is concerned that this may undermine the ESRB's ability to come to clear and appropriate warnings and recommendations to those bodies.

Submissions from sectoral associations and individual undertakings (66 responses), form the bulk of the contributions received, and views are diverse.

As a general matter, some submissions support the Commission's time table, while others consider it too ambitious to allow for proper discussion, and underline the importance to apply principles of better regulation. Several submissions stress that the reform's 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 strict confidentiality of data on individual firms.

Most submissions from sectoral associations and individual undertakings 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. Some submissions oppose the transfer of disaggregated data to the ESRB, 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 is focussed too much on 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.

Of the 7 submissions from consumer and end-user associations, most express cautious support for the Communication but criticise a lack of ambition in particular with regard to various aspects of consumer protection. One points for example to the consumer protection agency proposed in the US and expresses disappointment that the Commission did not propose a similar body specifically responsible for conduct-of-business supervision and consumer protection 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 Steering 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.

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 pan-European entities. On *macro-prudential supervision*, one submission suggests to publish ESRB all warnings and recommendations.