



**Committee Governance in the Financial  
Sector in the European Union**

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SEI Working Paper No 96

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First published in July 2007  
by the **Sussex European Institute**  
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## **Abstract**

*This paper examines the working of the ‘Lamfalussy committees’ in the banking and the securities sectors, asking whether these are ‘technical’ committees or ‘parapolitical’ ones. These committees are composed of experts (national civil servants) discussing regulatory and supervisory issues in a traditionally technical policy area – financial services. However, the issues discussed have political salience. It is argued that these committees of experts tend to be argument-based (level 2) and evidence-based (level 3), even though politics, as opposed to expertise, enter the policy process under specific circumstances.*

# Committee Governance in the Financial Sector in the European Union<sup>\*</sup>

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## 1. Introduction

After the so-called Lamfalussy reform<sup>1</sup> agreed in 2002, financial regulation and supervision in the European Union (EU) is largely carried out through specialised committees, which substantially complement the activities of the traditional EU institutional legislative triangle (the European Commission, which proposes legislation, and the European Parliament (EP) and the Council of Ministers of the EU, which co-decide it). Between 2002 and 2005, three sets of committees, usually referred to as the ‘Lamfalussy committees’, were established or reformed following the proposal outlined in the Wise Men Report (2001) with reference to the securities sector and subsequently extended by the ECOFIN council (2002) to all the main segments of the financial sector, namely, banking, securities and insurance (see Quaglia 2007). A committee dealing with financial conglomerates was set up in 2006.

This paper focuses on the committees in the banking and securities sectors. On the one hand, the committees in the insurance sector and the financial conglomerates committee are not included for reasons of space and in order to delimit the scope of the research. On the other hand, the analysis considers committees in two sectors in order to introduce a comparative dimension. The specific committees examined are: the European Banking Committee (EBC), a level 2 committee, following the terminology of the Lamfalussy architecture, as explained below; the Committee of

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<sup>\*</sup> I wish to thank the policy-makers and the representatives of industry who generously gave me their time for interview. I also wish to thank an anonymous referee for the perceptive comments. All errors, omissions and interpretations are mine. Financial support from the British Academy is gratefully acknowledged.

<sup>1</sup> Baron Alexander Lamfalussy was the chairperson of the Committee of Wise men (also known as Lamfalussy Committee) that produced the report on *The Regulation of Securities Markets* (2001) giving momentum to the reform of financial services regulation and supervision in the EU.

European Banking Supervisors (CEBS), a level 3 committee; the European Securities Committee (ESC), a level 2 committee; and the Committee of European Securities Regulators (CESR), a level 3 committee.

The level 2 committees have comitology functions for they assist the Commission in adopting implementing measures for level 1 framework directives or regulations (codecided by the EP and the ECOFIN Council), after receiving advice by the level 3 committees. They also have some advisory functions. The level 3 committees have advisory tasks, as far as the drafting of level 1 and 2 legislation is concerned, and implementation tasks (the so-called level 3 tasks). Both level 2 and 3 committees can be considered as ‘experts committees’ because their members have specific expertise in financial regulation and supervision and they are national civil servants from the treasuries or finance ministries (level 2 committees), the central banks and/or the supervisory authorities (level 3 committees). However, committee members do not serve in their personal capacity, they act as representatives of the national governments (in the case of level 2) and representatives of national supervisory institutions (level 3).

The period of time covered in this research spans from the Lamfalussy reform in 2002, when the new committee architecture was agreed, to present. It should also be noted that largely due to their recent origins, none of these committees has been included in previous research on committee governance in the EU.

The key questions addressed in this paper are: how do these committees function in a Union of 25/7? What are the formal and informal mechanisms that make possible for these committees to work with such a large number of participants? What are the main policy dynamics and mechanisms of interaction at play in the committees? For example, do they behave like ‘epistemic communities’ (Haas 1992), sharing a body of policy ideas (or ‘policy paradigm’, Hall 1993)? Or do intergovernmental negotiations and national interests prevail (Moravcsik 1998)? Are there stable or ad hoc coalitions and if, yes, brought together by what?

The material is organised as follows. Section 2 reviews the literature on committee governance, in order to tease out expectations that inform the analysis conducted in

the following sections. Section 3 deals with the two committees in the banking sector, whereas section 4 examines those in the securities sector. These sections discuss the composition, functions, policy-making activities and mode of interaction of these committees; hence the focus is on formal features (statutes and competences) and informal aspects (practices, policy coalitions). Section 5 compares the two sets of committees and dwells on their 'technical' status. It is argued that these committees of *experts* tend to be argument-based (level 2) and evidence-based (level 3), even though politics, as opposed to expertise, enter the policy process under specific circumstances. At level 2, this is likely to happen when some political issues not settled at level 1 (or unsatisfactorily settled for some member states at level 1) are re opened at level 2, and/or when implicit trade offs takes place between member states with different (but not contrasting) policy priorities. At level 3, bureaucratic politics affects the functioning of the committee when the consolidated practices and bureaucratic competences of the regulators are at stake, and when member states team up levels 2 and 3 on regulatory issues of specific political salience to them.

## **2. Taking stock from the literature on committee governance in the EU**

In political science, the literature on EU committees has been flourishing from the late 1990s onwards. Empirically, it has examined the Council committees and working groups, the Commission committees, the EP committees and comitology committees (for a review of this literature see Quaglia et al 2007). As far as the research focus is concerned, the literature can be grouped into two main streams. First, there are scholarly works that are primarily interested in committees' role in EU policy making and more generally in EU governance, whereas the internal functioning of these committees and especially the social interaction of their members are of secondary relevance, even though these aspects are considered in many of these studies (see the edited volume of Christiansen and Larsson 2007, Christiansen and Kirchner 2000; see also Bergström 2005).

Second, there are scholarly works that are primarily interested in the members of the committees and their interaction, especially the socialisation process that might take place in the committees (Beyers 2005, Beyers and Dierickx 1997, Egeber 1999,

Egeberg, Schaefer and Trondal 2003, Lewis 2005, Trondal and Veggeland 2003). Some of these studies however also investigate the functioning of these committees and their contribution to EU policy making.

Finally, there are works that bridge the two strands, dealing with the issue of why some issues are defined as 'technical' and others as 'political' in EU committees (Foullieux, de Maillard, Smith 2005) and whether comitology committees are fora for socialization and deliberation, or arenas for rational bargaining, firmly under the control of the member states (Pollack 2003).

The theoretical angle taken by almost all the studies that are interested in the social interaction in the committees is constructivism (often a 'soft' version), sometimes combined with new institutionalisms, organizational theory and political psychology. Beyers and Trondal (2004: 919-920) also provide a link with the concept of Europeanization (by showing how member states 'hit' Europe through domestic officials involved in EU committees). By contrast, the works examining the policy making functions of the committee mainly engage in institutional and policy analysis.

What many of these works have in common is the limited attention devoted to the policy area dimension, which often makes the discussion quite abstract, in that the activities of the committees are de contextualised from the policy context in which they take place and the specific policy content (or issues) being discussed. This is important because in different policy areas and on various policy issues the same committee (and its members) might behave quite differently, downplaying the epistemic character in favour of a more intergovernmental format (or vice versa); or forming variable ad hoc coalitions, depending on the specific policy issues being discussed.

This paper straddles the two bodies of literature on committee governance reviewed above: it pays attention to the composition and institutional features of the committees, but it also investigates their role in the policy making process. This approach is reflected in the operationalisation of the research, which first examines the formal and informal institutional features of the committees and it then makes reference to some policy making cases. This way of proceeding is instrumental in

order to gather an empirically grounded understanding of mechanisms of committee governance in the financial sector.

Most of the existing literature on EU expert committees tends to emphasize the epistemic character of committees; the potential for and relevance of policy learning; the capacity to foster consensus and legitimacy of decision-making; socialisation component; the fact that decision-making is facilitated by having a small circle of experts. This paper treats these assumptions as a matter for empirical research, evaluating them against the empirical record, seeking to confirm whether they hold (or not) in the case of the committees in the financial sector.

### **3. The Lamfalussy committees in the banking sector**

The *European Banking Committee* (EBC), which held its first formal meeting in July 2005, is the successor to the BAC, set up in 1978. The EBC is composed of high-level representatives from the member states, usually from the treasury or the finance ministry, in a few cases from the central banks and/or supervisory authorities – it is up to each member state to decide. There is one official representative per member states accompanied by two or three members. The EBC is chaired by a representative of the Commission, usually a senior official from Directorate General Internal Market – Financial services and the secretariat is also provided by the Commission. Observers from the European Central Bank (ECB), the CEBS as well as representatives from EFTA countries and candidate countries are also invited to attend the meetings. The EBC generally meets at least three times a year in Brussels for the entire day, but working groups (WGs) of the EBC meet more often and in parallel eg the WG on the Credit Requirements Directive (CRD) and the WG on large exposure. Most of the discussion takes place in English, and the full range of translations is not available. There is no tour the table and the agenda includes core issues, technical matters and information (eg reports from the CEBS).

The EBC is a level 2 committee that fulfils comitology functions, which means it assists the Commission in adopting implementing measures (generally directives, less frequently regulations) for level 1 framework legislation and provides advice on

policy issues related to banking activities. The EBC operates by Qualified Majority Voting (QMV) and the voting weight is the same as in the council of ministers, but de facto consensus is sought (interview, Brussels, 29/3/2007). Unlike some Council WGs where pre negotiations take place whenever legal text has to be agreed, in the EBC there are no pre negotiations, not least because there have not been many negotiations of legal text to date. This might change in the future, once the EBC will deal with the approval of level 2 implementing measures proposed by the Commission. To date, only two comitology procedures have gone through the committee and they concerned minor amendments of the directive 2006/48 and the directive 2000/12.

Unlike its analogue in the securities sector, the EBC has not dealt with any Lamfalussy directive because it has focused on the transposition of the so called Basel 2 agreement (2005) *International Convergence of Capital Measurement and Capital Standards: a Revised Framework*, which is a non legally binding international agreement, into the CRD, which is legally binding EU legislation (see Quaglia 2006). The WG on the CRD has mainly focussed on questions of interpretation, whereas a similar WG set up at the CEBS has dealt with issues of convergence and implementation.

Other important matters discussed by the EBC since its inception have been the amendment of the Banking directive (2000/12) with a view to promote cross borders consolidation in the banking sector, as decided by the informal ECOFIN council meeting in Scheveningen in November 2004. The negotiations focused on the amendment of article 16 of the Banking directive 2000/12/EC that outlines the supervisory approval process for the acquisition of a 'qualifying shareholding in a credit institution'. The discussion was subsequently extended to measure concerning cross border consolidation in the securities sector (hence, revision of art 10 of the Market in Financial Instrument directive, MiFID, 2004/39EC) and insurance (art 15 of directive 2002/83/EC and directive 92/49/EEC and articles 19-23 directive 2005/68/EC). In the banking sector, technical advice from the CEBS was requested by the Commission and received in May 2005. Afterwards, the Commission put a formal proposal forward for the amendment of the supervisory approval process in the member states, with a view to streamline it and to make it more objective. All the 25 member states, except one (Poland), were in favour of it.

Finally, the EBC has examined the reports presented by the Commission following the review of some existing directives, for example, on the reorganisation and winding up of credit institutions, the deposit guarantees scheme, large exposure, e-money, as well as in the consultation concerning the possibility of proposing new directives, for example in the field of mortgage credit. It has also discussed the reform of the supervisory arrangements in the EU, an issue on which ‘passion builds up’ because the member states know that they can express their view freely in the committee (interview, Brussels, 29/3/2007).

Generally the committee is a forum for policy debate and opinion forming (interview, Brussels, 29/3/2007). The kind of debate that takes place in the EBC concerns mainly broad policy lines, not so much technical detailed issues, not least because level 2 implementing measures have not yet been discussed in banking, unlike in the securities sector. The main purpose of the meetings for the Commission is to have an early discussion on certain issues, to present provisional proposals and to get a feeling of what the member states want, before tabling the proposals formally at the next meeting. For the member states it is a way to express their policy preferences and to influence the Commission. The issues that tend to be most consensual in the committee are those further ahead and general principles (eg convergence of supervisory practices). ‘The devil is in the details’ and therefore technical issues (eg which ‘best rules’ should be applied in liquidity management) are difficult to agree (interview, Brussels, 29/3/2007).

The *Committee of European Banking Supervisors* (CEBS) was set up in 2004 in London. According to its Charter, each member state designates a senior representative from the national competent supervisory authority in the banking sector and this representative is the voting member. In addition, each member state appoints as a non-voting member a senior representative of the national central bank when the national central bank is not the competent authority. If the national central bank is the competent authority, the Member State may designate a second representative from this institution. The ECB also designates a senior representative as a non-voting member. Representatives from countries of the EEA participate as observers, together

with the European Commission and the Chair of the Banking Supervision Committee (BSC) of the European System of Central Banks (ESCB) (art 1).<sup>2</sup>

The chairperson is elected by the members of the committee amongst the representatives of the competent supervisory authorities for a two-year term. The chair is chosen by consensus or if consensus cannot be achieved by a majority of two thirds of the voting members. In this respect, 'the voting members should seek to represent the common view of voting and non-voting members of the member state' (art 2). For the duration of the chairmanship period, the relevant supervisory authority nominates an additional member as representative. The vice chair is elected by the committee following the same procedure used to elect the chair. For a period of two years, the committee may also elect up to three members to form the bureau, whose role is to advise and assist the chair, e.g. in the preparation of meetings and in its administrative functions. 'The members of the bureau shall reflect the composition of the Committee' (art 2).

The secretary general is proposed by the chair, after consultation with the vice-chair and the bureau and is appointed by the committee for three years, renewable (art 7). Other permanent or seconded staff are appointed on a personal basis by the chair after consulting with the vice chair and the secretary general. In general, the seconded staff of the secretariat is provided by the voting members of the committee. The committee has an annual budget, which is proposed by the chair, after consultation with the vice chair and the bureau, to the committee, which decides on its adoption. The members of the committee and the observers contribute annually to the budget.

The CEBS advises the Commission, either at the Commission's request or on the Committee's own initiative, in particular as regards the preparation of draft-implementing measures in the field of banking activities (level 2 measures), as well as in the preparation of level 1 legislation. It contributes to the consistent implementation of EU directives by issuing 'standard' and 'guidelines' and to the convergence of member states' supervisory practices throughout the EU (level 3 measures). Finally, it promotes supervisory co-operation, including through the exchange of information. It

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<sup>2</sup> <http://www.c-eps.org/CEBSCharter.htm> accessed on 20 January 2007.

should be noted that CEBS's advice to level 1 and 2 is not strictly speaking a level 3 functions. The CEBS reports to the Commission and is accountable to the Council and the European Parliament; it prepares notes and reports to the Committees that sit under the Council, mainly Economic and Financial Committee (EFC)-Financial Stability Table (FST) and Financial Services Committee (FSC).

The CEBS operated by consensus, as its decisions are not legally binding. Qualified majority voting in CEBS is used for providing advice to the Commission, whenever consensus cannot be achieved, but unanimity is required on other matters, including convergence.<sup>3</sup> Participation in confidential discussions about individual supervised institutions can be restricted to the competent supervisory authorities and to the central banks entrusted with specific operational responsibilities for supervision of the individual credit institutions concerned.

The CEBS operates in English, it meets at least three times a year and it organises its work in several working groups and task forces. The main permanent working group is the Groupe de Contact, a long-standing group of banking supervisors from the European Economic Area (EEA), which dated back to 1972 and that had traditionally focused on supervisory practices and the exchange of confidential and non-confidential information between competent authorities. The Group supports the development of operational networks for cooperation and convergence of supervisory practices as well as exchange of information between EU banking supervisors (CEBS 2005). Other groups were set up with a separate mandate and in 2005-6 the most active has been the one dealing with the implementation of the CRD (see below). As for the task forces, it is important to mention the Task Force on Crisis Management, which was established jointly with the ESCB's BSC, with a view to improve cooperative arrangements for managing potential banking and financial crises (CEBS 2005).

The committee generally conducts open consultation with market participants (e.g. credit institutions, investment firms, etc), consumers, other end-users as well as their

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<sup>3</sup> CEBS has established a Consultative Panel of representatives of market participants and end-users to facilitate the consultation process. The Panel acts also as a 'sounding board' for the CEBS on strategic issues.

representative associations (see CEBS 2005b).<sup>4</sup> The consultation proposals, related documents and key dates are made public using a variety of means, including Internet and written consultations, public hearings and roundtables, and, sometimes bilateral meetings.<sup>5</sup>

To this date, the main area of activity of the committee has been the implementation of the Basel 2 accord and the CRD. One of the main tasks of the committee was to deal with the issue of ‘national discretion’, in that the CRD contain options and discretion that national authorities can use when implementing it domestically (art 144, b). A considerable amount of work was conducted by the CEBS to examine and reduce the number of national discretions and dealing with the issue of ‘supervisory disclosure’.<sup>6</sup> In 2006 the CEBS finalised its first set of guidelines - a common European framework for supervisory disclosure - which is intended to make supervisory practices more transparent, promoting consistent implementation of EU legislation and convergence of supervisory practices across the EU (CEBS 2005a). The committee also discussed art. 129 of the CRD, which authorises the ‘consolidating supervisor’ of cross border financial groups to validate and authorise the internal models of risk assessment and requires the national supervisors to cooperate for this purpose. Finally, the CEBS played a prominent role at the EU level in the Quantitative Impact Study (QIS) 5, which was performed by the Basel Committee of Banking Supervisors (BCBS) in 2005, in order to evaluate the impact of new proposals for the recognition of double default and trading book-related issues in Basel 2.<sup>7</sup> The CEBS prepared a report that was submitted to the Commission and the EBC.

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<sup>4</sup> [http://www.c-eps.org/Consultation\\_papers/CP01\\_final.htm](http://www.c-eps.org/Consultation_papers/CP01_final.htm) accessed on 20 January 2007.

<sup>5</sup> When the Committee chooses to target its consultations to market participants and their representative associations only, such targeted consultations is announced and followed by the publication of the Committee's final decision on the topic (CEBS 2005b).

<sup>6</sup> Article 144 of the CRD requires competent authorities to provide information on their supervisory and regulatory systems, specifically requiring that these disclosures be published in a common format and made accessible in a single electronic location. Accordingly, the CEBS has developed a common European supervisory framework accessible through the CEBS website. The framework facilitates the comparison of national legislations that implement the CRD, and of the ways in which Member States exercise the options and national discretions available to them in the CRD. In addition, the framework enables institutions to compare the criteria and methodologies that supervisors use in evaluating and reviewing them (CEBS 2005a).

<sup>7</sup> <http://www.c-eps.org/qis5.htm> accessed on 20 January 2007.

The CEBS is mostly a technical committee: the members of the CEBS know each other well,<sup>8</sup> there is a high level of trust and the sharing of a supervisory culture, even though the concrete convergence of supervisory practices is still problematic. For example, on the issue of liquidity risk management in the own funds directive, the CEBS was given the mandate by the Commission and EBC to discuss the convergence of standards. The CEBS concluded that standards were too different to converge (interview, Brussels, 29/3/2007).

#### **4. The Lamfalussy committees in the securities sector**

The *European Securities Committee* (ESC) was established in 2001 and it was explicitly mentioned in the so-called Wise Men Report on the Regulation of European Securities Markets, chaired by Baron Alexandre Lamfalussy. The ESC is composed of high-level representatives from the national treasury or finance ministry, or in a few cases (eg Belgium) from the central bank and/or supervisory authority – it is up to each member state to decide. There is one delegate per member states, one or two alternates and occasionally one or two experts depending on the topics dealt with in the meeting.<sup>9</sup> Observers from the ECB, the CESR (see below), and the EEA countries are invited to attend. It is chaired by a senior official from DG internal market – financial services and the secretariat is also based in this DG. The ESC meets in Brussels, generally once a month.

Like the EBC in the banking sector, the ESC is a so-called ‘level 2’ committee in the securities sector. It fulfils both comitology and advisory functions, in that it assists the Commission in adopting implementing measures for EU Directives agreed at level 1 and provides advice on policy issues in the securities field. In its advisory capacity the ESC advises the Commission on securities issues relating to the adoption of proposed directives or regulations under co-decision (level 1). The ESC operates by QMV and the voting weight is the same as in the council of ministers, even though votes are not often taken (interview, Brussels, 28/3/2007).

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<sup>8</sup> Some of the CEBS members have worked in various policy locations in the EU. For example, the vice chair of the CEBS, Helmut Bauer, had previously worked at the Commission, the British Financial Services Authority, and he is currently based at the BaFin, the German Financial Services Authority.

<sup>9</sup> [http://ec.europa.eu/internal\\_market/securities/esc/index\\_en.htm](http://ec.europa.eu/internal_market/securities/esc/index_en.htm) accessed on 27 February 2007.

So far, the ESC has focused its activity on the implementing measures of four Lamfalussy directives. The framework directives that were codecided by the EP and the Council and for which implementing measures were needed were: the Prospectuses Directive, which concerned the documents required to accompany the sale of new securities and that help investors to assess issuers trying to raise capital or to have their securities traded. The Market Abuse Directive, which dealt with issues such as insider-dealing, distorting the price-setting mechanism of financial instruments or spreading misleading information. The Transparency Directive, which set requirements with regard to information on issuers whose securities are admitted to trading on a regulated market. The Market in Financial Services Directive (MiFID), also referred to as Investment Service 2 (ISD2), following the first Investment Services Directive (ISD) issued in 1993, which gave investment firms a "single passport", allowing them to operate throughout the EU on the basis of authorisation in their home Member State.

Other matters discussed by the ESC have mirrored the developments taking place in the banking sector, such as the amendment of the provisions concerning cross border consolidation in the MiFID. Finally, an issue that has gained prominence from 2005 onwards was potential EU action in the securities and settlement system, and the creation of TARGET 2 securities, managed by the ECB.

The ESC is a technical body, but it has also to consider national governmental policies, hence it has a more 'practical approach' and a more 'political view' than the CESR (interview, Brussels, 30/3/2007). In the ESC, there are two main lines of attrition. First, sometimes the member states try to redefine (or re open) issues at level 2 so as to change what was agreed at level 1, if they were not satisfied with the outcome at level 1 and the issue is politically salient for them. The CESR can also be involved in this, as exemplified by the definition of 'liquid markets'. In these instances, mirroring what happens at level 1, there are two main policy coalitions exposing two different economic philosophies: the free market coalition (led by the UK, and generally including Ireland, Scandinavian countries, the Netherlands and Germany in-between) versus market shaping coalition (led by France, and including the Mediterranean countries, and Belgium, though not in all cases) (interviews,

Brussels, 28/3/2007). This mainly concerned the MIFID, especially the level 2 measures dealing with 'pre trade transparency', 'internalisation' and the definition of 'normal market size' and 'liquid shares', jokingly referred to in Brussels as 'politically liquid shares'. Hence, the member states can team up at level 2 and 3 whenever a certain issue is of particular political salience to them.

Second, there are discussions between the Commission and the member states, because the ESC expects the Commission to take into account level 3 advice. The CESR sometimes proposes text, which is not accepted by the Commission - partly because it is a question of competence - whereas the representatives sitting in the ESC are eager for the Commission to follow the advice given by their regulators. Moreover, discussions also concern the legal instruments to be used, that is whether the implementing measures should be adopted in the form of a regulation or a directive. For example, with reference to the Prospectus directive, the Commission proposed a regulation (which is quicker to apply in the member states, it should deliver more uniform results and is generally preferred by industry) but the level 1 provision was a directive and the member states preferred a directive.

The *Committee of European Securities Regulators* (CESR) was established in 2001 and, together with the ESC, it was explicitly envisaged in the Final Report of the Committee of Wise Men. The CESR is based in Paris, it has a secretary general, whereas chair and vice chair are elected from among the members for a period of two years. The committee meets at least four times a year and the members are securities regulators from the member states. One seat per member state is allowed in the meetings of the committee, but the members of the committee may be accompanied by appropriate experts. A representative of the Commission is entitled to participate, with the exception of confidential discussions related to individuals and/or firms.

The committee is chaired, in a personal capacity, by one of the members, elected by secret ballot by the committee members for a period of two years. The chair is assisted by one (or more) vice chairs, elected following the same procedure (art 2). The secretary general is appointed by the committee after being proposed by the chair and the vice chair(s) for a period of three years, renewable. Other permanent or seconded staff are appointed on a personal basis, by the chair after consulting with the

vice chair(s) and the secretary general (art 7). The committee has an annual budget, proposed by the chair for the committee's approval. The members of the committee contribute to the budget (art 8).

The CESR is involved in levels 2 and 3 of the Lamfalussy process. At level 2, it advises the Commission in the drafting of implementing measures voted upon by the ESC. At level 3, the CESR monitor the implementation of EU legislation across the EU; facilitate the cooperation and exchange of views and best practices between supervisory authorities (regulatory convergence); and promote convergence of supervisory standards and requirements (supervisory convergence). Voting modalities were slightly changed in 2006 with a view to streamline the decision making process, explicitly introducing QMV when delivering advice to the Commission (art 5.6) For level 3 work, unanimity is required (art 5.7).

The CESR cooperates with the other level 3 committees established as part of the Lamfalussy process. The CESR also has close contacts with the ECB and the ESCB, particularly in the field of securities clearing and settlement systems, where a joint group was established by CESR and the ESCB to adopt standards at EU level. As far as accountability is concerned, the Committee submits an Annual Report to the Commission, the Parliament and the Council. The chair of the committee report periodically to the Parliament and/or when requested, and maintain strong links with the ESC (art 6).

Organisationally, the CESR has established a number of operational groups (sometimes referred to as permanent groups), which have the purpose of strengthening the network of regulators in a given area as agreed in a Multilateral Memo of Understanding. An operational group is chaired by a senior representative of a CESR member. Much of the work of an operational group is therefore focused on producing work of a level 3 nature according to the Lamfalussy process.<sup>10</sup>

The CESR has established a number of expert groups, which work on the basis of a mandate either supplied by the Commission (level 2), or by CESR (level 3). The

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<sup>10</sup> <http://www.cesr-eu.org/index.php?page=workingmethods&mac=0&id=> accessed on 11 February 2007.

expert groups are chaired by the head of one of the CESR members and CESR members send national experts to participate in each expert group. It is common practice for the groups to establish a consultative working group of market participants (practitioners, consumers and end-users) to provide technical advice to the expert group during the drafting process. The market participants are experts drawn from across the EU member states, though they are not intended to represent national positions or a specific firm interest.<sup>11</sup>

Indeed, one of the tasks it was assigned as part of the Lamfalussy process is to conduct consultations with policy stakeholders on the content of level 2 legislation, which comprises measures implementing the framework directives agreed at level 1 in co decision between the EP and The Council. The usual procedure is for the CESR to post a document on the website and to circulate it to policy stakeholders (industry, consumers' groups etc.) asking for comments within a certain time frame. The responses received are generally posted on the CESR's website, unless asked otherwise by the respondents. The CESR would often publish a response to the comments received, explaining how they were taken into account by CESR in providing comments on the implementing measures drafted by the Commission.

In term of institutional evolution, in 2004 the CESR published for consultation a report entitled 'Which supervisory tools for the EU securities markets?' (Ref: CESR/04-333f), which, amongst other things, called for greater supervisory convergence and for the national supervisors members of the CESR to be given equivalent legal and functional capacity to act. It also flagged the need to consider the creation of trans-national supervisory tools, subject to an appropriate ex-ante evaluation. The rationale that was put forward by the CESR was that the uneven powers of national supervisory authorities made it more difficult for the CESR to coordinate its activities. While speaking at an ESC meeting, the CESR chairman explained that the Himalaya report referred primarily to supervisory and not regulatory powers (ESC 2004). It should be noted that the CESR demands were not shared by other level 3 committees (see Lannoo 2006).

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<sup>11</sup> <http://www.cesr-eu.org/index.php?page=workingmethods&mac=0&id=> accessed on 11 February 2007.

The outlook for the CESR is set to be a ‘metamorphosis from being primarily a regulatory advisory body to being a body which is well on its way to becoming an operational network of supervisors’ (CESR 2006: 5). Supervisory convergence has raised high on the agenda of the EU institutions, as evidenced by the recommendations of the Financial Services Committee (FSC),<sup>12</sup> discussed and endorsed by the ECOFIN in spring 2006.

## **5. An assessment of the Lamfalussy committees: ‘politics’ or ‘expertise’?**

The monitoring of the activities of the Lamfalussy committees in the banking, securities and insurance sectors is conducted by an Inter-institutional Monitoring Group (IIMG) for financial services, established in 2005 and composed by six independent experts, two nominated by each institution (the EP, the Commission, the Council).<sup>13</sup> So far, the IIMG has published two reports (2006, 2007), based on evidence given by the stakeholders closely involved in the Lamfalussy process and market participants. The overall assessment of the Lamfalussy system is positive, however, five main sets of open issues are often pointed out (see also the House of Commons 2006).

First, the distinction between level 1 and 2 measures is sometimes unclear (or rather deliberately fuzzed) in that level 1 provisions, which are supposed to be framework legislation, are too detailed, whereas the technical details should be dealt with by the level 2 implementing measures (IIMG 2006, interview, Brussels, 30/3/2007). The reason for the excessive amount of details included in the framework legislation is twofold. Before the 2006 reform of comitology, the EP codecided only level 1 legislation (not level 2), and it was therefore keen to include as much as possible in the framework legislation. In addition, the member states themselves, when negotiating the framework legislation, are inclined to include details concerning the issues that are most important for them, to avoid any potential divergence in

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<sup>12</sup> The FSC mandated a subgroup, chaired by Thierry Francq, to produce a report on the matter of how supervisory convergence could be enhanced in EU.

<sup>13</sup> [http://ec.europa.eu/internal\\_market/finances/committees/index\\_en.htm#interinstitutional](http://ec.europa.eu/internal_market/finances/committees/index_en.htm#interinstitutional) accessed on 21 February 2007.

implementation or any re interpretation of the framework rules during the implementation process.

Second, the level 2 and 3 provisions are sometimes regarded as too detailed, as in the case of the implementation of the CRD and the issue of national discretion (IIMG 2006). On the one hand, there is the need to ensure as much as possible the uniform implementation in the member states. On the other hand, the level 3 committees sometimes find it difficult to agree on essentials, partly because of their large membership (the CEBS has more than forty member organisations representing 27 member states) and partly because they work by consensus, hence they need to balance different preferences. They often do so by adding together the regulatory practices and policy preferences of the various member states, instead of looking for a common denominator (Von Kenne 2006: 21, see also House of Commons 2006). As one representative from industry put it, level 3 committees tend to have a 'perfectionist view' (Brussels, 30/3/2007), hence there is a tendency to gold plate, that is to add national rules to EU rules.

Third, there is the issue of what is treated as 'political' and 'technical', which also has implications for the level at which certain issues are dealt with. Sometimes political decisions cannot be resolved at level 1 are passed down to level 2 and 3 (House of Commons 2006, EV 51). 'In reality the extent to which a particular decision is 'political' depends upon how important it is perceived to be by politicians or interest groups. Generally if a decision is regarded as uncontentious or not having a significant effect on the industries or consumers of one or more Member States it is accepted as being technical. Otherwise a decision is at risk of being described as political by one or more interest groups or by politicians.' (House of Commons 2006, EV 51).

A fourth related issue is the sequencing of the work of the various levels, which has also implications for the interaction between 'technical' and 'political' decisions. On the one hand, the need to increase efficiency would call for speeding up the policy process through parallel work taking place at the various levels (IIMG 2006, 2007). On the other hand, there is the concern that the work undertaken at level 3 (hence 'technical' measures) could prejudice forthcoming level 1 initiatives (the 'political'

discussion). An example are the level 3 measures jointly developed by the CESR and the ESCB concerning standards in the field of securities and settlement,<sup>14</sup> before any level 1 legislation was adopted, despite the fact that the Commission was working in this direction (EP 2005, interview, Brussels, 30/3/2007).<sup>15</sup>

Whereas the issues pointed out above mainly refer to the effectiveness or efficiency of the Lamfalussy framework,<sup>16</sup> there is also a fifth broad set of issues concerning the accountability and legitimacy of the new framework, two of which can only be mentioned very briefly here. The limited role played by the EP in level 2 policy making was addressed in 2006, when the Comitology process was updated and the EP was given the same power as the Council (on this issue see Christiansen and Vaccari 2006). However, the access of consumers groups to the consultation process, largely due to the lack of economic and technical resources, requires further attention (House of Commons Report 2006).

The committees analysed in this paper are characterized by complex dynamics. They are composed of *experts* (national civil servants) discussing regulatory and supervisory issues in a traditionally *technical* policy area – financial services. However, the issues discussed have direct and indirect *political* salience. First, regulation and supervision generate economic costs and benefits for market players, which have therefore an incentive to attempt to influence the policy making process by engaging in EU and national lobbying activities. It should be noted that because of the resources at their disposal, they can be influential lobbyists. Moreover the Lamfalussy process deliberately elicits input from industry through extensive consultation.

Second, regulation and supervision can be directly salient for the political authorities because they are necessary in order to prevent (politically costly) policy failures, securing the public goods of financial stability. Moreover regulation and supervision

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<sup>14</sup> These standards are based on the recommendations of the Committee on Payment and Settlement Systems of the central banks of the Group of Ten countries (CPSS) and the International Organization of Securities Commissions (IOSCO), adapted to the European context (CESR 2002).

<sup>15</sup> The ESCB-CESR guidelines were eventually put on hold, waiting for the Commission's position.

<sup>16</sup> Another criticism is that the time frame of the consultation is too short and some consultations are duplicated by the Commission.

can provide (or deny) comparative advantages to national financial systems and/or policy stakeholders based in the member states. EU regulation can cause considerable adjustment costs in the member states. The national governments and the technical regulators are sensitive to this.

It is beyond the scope of this paper to explore these issues in details. What is important here is the effect that they have on the functioning of the Lamfalussy committees. To be precise: do the committees work according to an intergovernmental dynamic, informed by a political logic, or do they resemble epistemic communities of experts, taking decisions on the basis of a technical logic?

The evidence suggests that the answers to these questions depend on the level of the committee and the specific issues being discussed. Level 2 committees are more ‘parapolitical’ than level 3 committees (interview, Brussels, 29/3/2007). This is because the senior officials sitting at level 2 report to their ministers and interact with the national industry, whereas the members of level 3 committees come from (often independent, or semi independent) supervisory authorities. In a few cases that are politically salient for the member states, the latter use the level 2 discussions to reopen or renegotiate issues dealt with at level 1. In these instances, different economic philosophies – free market versus market shaping – often come to the fore (as it had previously happened during the negotiations taking place at level 1). The other way in which the level 2 committees can be seen a political is when passive trade offs take place between the national representatives sitting on the committees. In other words, members identify which issues are important for the other member states and make concessions that are reciprocated (interview, Brussels, 27/3/2007).

However, even at level 2, policy making is generally based on technical argumentation rather than intergovernmental negotiations: if a member state explains convincingly why it has a problem with a certain provision, the issue is taken on board by other member states in the committee. Most of the time it is not a matter of protecting domestic interests or the national interest strictly defined. It is rather a matter of a regulatory patchwork (member states do things in different ways), which might require considerable adjustment costs for the member states to change. As one

policy maker colourfully put it: ‘there are different ways to skin a cat’ (interview, Brussels, 27/3/2007).

The general view is that the level 3 committees do not take decisions on a political basis, especially when developing level 3 measures (eg standards). They are evidence based (interview, Brussels, 29/3/2007). However, when providing advice to level 2 concerning implementing measures, there have been rare instances in which level 3 committees’ advice was affected by political considerations of what would have been acceptable to the national governments (House of Commons 2006, Ev 52) and national financial systems. An example of member states teaming up at level 2 and 3 was the CESR’s advice on the broad definition of ‘liquid share’ in the MiFID.

Moreover, on issues that directly affect the tasks and powers of the supervisory authorities, the members of the committees might be inclined to defend their (bureaucratic) preferences. For example, the advice on ‘time limits’, ‘assessment criteria’ and ‘Commission’s access to detailed prudential information’ given by level 3 committees on ‘cross border consolidation’ (see above) could be interpreted in this light (see the joint letter sent by CESR, CEBS, CEIPOS to Commissioner McCreevy on 29 September 2006).

Finally, it is worth exploring the issue of which policy makers carry more weight in the committees of the Lamfalussy process. In the level 2 and 3 committees, the big member states, which also have the largest financial sectors (and, arguably, first hand expertise), tend to be the most influential, also because of the possibility of using QMV (except for the adoption of level 3 measures), even though consensus is often sought. The old member states with a relatively large financial sector are also influential, whereas the new member states seem to be less engaged (except in specific cases, such as the revision of the cross border directive mentioned above). In the level 3 committees, the chair plays an important role and some members of the CEBS have stressed the importance of a ‘strong’ chair, ‘trusted by the committee’ in order to achieve results.

In the adoption of level 2 implementing measures, the Commission may decide not to follow the advice given by the level 3 committees, in which case it has to explain why

it decided to reject it, or to follow it only partially. In practice, this happened in the adoption of some implementing measures of the MiFID and the Prospectus directive, causing problems when the vote was taken in the level 2 committees, in that the member states teamed up with their (level 3) regulators and the Commission had to submit several drafts before the proposals were adopted.

## **Conclusion**

This paper has focused on the Lamfalussy committees in banking and securities, examining their composition, functioning, interactions, and contributions to the policy making process in the financial sector. These committees are neither ‘epistemic communities’ of experts with no policy making power, nor simply ‘intergovernmental’ fora for political negotiations. They are committees of experts that deal with technical issues, some of which have political salience, and this might affect the policy making process. At both levels, whenever negotiations take place, they are primarily based on technical arguments and indeed expertise is a valuable asset for policy makers sitting on the committees. The committee members are regulators and supervisors who value technical knowledge in policy discussion, but they are also national representatives that need to take into account national policy preferences, especially at level 2.

It is important to stress the experimental and evolutionary character of the Lamfalussy committees, which have an interesting institutional design that departs from ‘standard’ EU committee templates. This paper represents very much work in progress, hence this is an early cut at the analysis and further research is needed in this field.

Feeding into the broader literature on committee governance reviewed in section 2, this research argues that technical and political dynamics in the committees depend on the policy issues dealt with, first and foremost their political salience. Hence any assessment of committee governance in the financial sector (and, arguably, in other sectors as well) needs to be qualified, grounding it in empirical policy analysis.

Overall, in the Lamfalussy framework, agreement at level 1 is more difficult to reach than agreement at level 2, which is more difficult than agreement at level 3, which

suggests that technical expertise tend to facilitate agreement and consensual policy making. It is also a process of learning by doing. For example, the initial attempt of the CEBS to reduce national discretion on the CRD had very limited results. The first consultation document produced by CESR on the implementation of the prospectus directive was hundreds of pages, raising complaints from industry (interview, Brussels, 30/3/2007).

The time for consultation was also too short and it was subsequently lengthened. The first four Lamfalussy directives took time to be negotiated, but the adoption of a second set of measures in the securities sector is likely to be smoother. Arguably, something similar will happen in the insurance sector during the negotiations of the Solvency 2 directive. The adoption of level 2 implementing measures in the banking sector will also be a process of learning for the EBC. It is a ‘revolution in an evolutionary way’ (interview, Brussels, 27/3/2007).

Despite the fact that the Lamfalussy framework is still in the process of being appraised and refined, it begs the question of whether it could provide a model for other policy fields. The answer needs to be qualified because it is important to bear in mind the specificity of these committees, in that their membership, especially at level 3, is composed of technical authorities, often keen (and able) to remain at arm’s length from their national government, and with a consolidated tradition of interaction and cooperation in international and European fora (especially in the banking sector). Moreover, they regard themselves as technical authorities, which value expertise in policy discussions and which are part of a transnational community sharing a ‘supervisory culture’ (this expression appears recurrently in the documents produced by the Lamfalussy committees and well as during interviews with policy makers).

Finally, although this policy area is economically important and politically salient for market players, the technical authorities and the national governments, it does not attract much public interest and it is somewhat insulated from the scrutiny of public opinion, not least because of its technical complexity. These conditions, which are conducive to technocratic governance (cf Radaelli 1999), do not readily translate to other policy areas.

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