

Position Paper Erste Group Bank AG

CEBS Consultation Paper on the Guidebook on Internal Governance (CP 44)

Vienna, 01.12.2010

Erste Group was founded in 1819 as the first Austrian savings bank ("Erste oesterreichische Spar-Casse"). In 1997, Erste Group went public with a strategy to expand its retail business into Central and Eastern Europe. Erste Group's customer base has grown through numerous acquisitions and organic growth from 600,000 to 16.6 million, of which 15.5 million clients live in the fastest growing economies of the European Union. These countries benefit from the stable EU regulatory framework. Having always focussed on retail and SME business, today Erste Group is one of the largest financial services providers in Central and Eastern Europe in terms of clients and total assets.

1. General Remarks

Erste Group Bank AG (EGB) welcomes the opportunity to comment on the CEBS Consultation Paper "Guidebook on Internal Governance" and to support CEBS in this area of high importance. EGB appreciates the idea of a single guidebook on this topic and the efforts undertaken by CEBS so far. We are convinced that this guidebook will have an added value.

Before going into detail we would like the following general remarks.

1.1. Involvement of Banking Stakeholder Group

We would like to propose to discuss this draft also with the Banking Stakeholder Group, after being established. The guidebook will already be published by the new European Banking Authority. Thus the mechanisms foreseen in the new European supervisory architecture should already be used before publishing the guidebook.

1.2. Management Body

We highly appreciate that CEBS is aware of the different governance structures within the Member States (see point 15). Nonetheless we think that the purely functional concept of the paper (point 16) may sometimes cause difficulties in its implementation of the guidebook. It should be stated that the aim of the paper is not to shift any responsibilities within the national legislation of the Member States (e.g. point 45 states, that the management body should review and adjust the policies and strategies mentioned in Principle 5. If in a member state the management body in its management function was responsible for that until now, it should be made clear, that there is no responsibility shift to the supervisory function initiated by Principle 5).

To improve the Guidelines' comprehensibility we therefore suggest that – notwithstanding respective national legislation – CEBS should clearly define to which of the management body's function (management function or supervisory function) particular tasks or responsibilities of the guidebook are designated to (e.g. should only the supervisory function of the management body have a limited number of mandates (point 57)?, does the access to individually tailored training programmes apply both to management and supervisory function (point 65 etc.)?).

Thus we propose that CEBS allocates every single task/responsibility defined in the guidebook to the management function or the supervisory function or – where applicable – to both functions. Such an allocation would ease the process significantly and would not contradict the principle of CEBS using the term management body.

1.3. Principle of Proportionality

The principle of proportionality is crucial when implementing the guidebook. Thus we would expect more guidance of CEBS with regard to this issue. Especially with the new dimension of guidelines beginning with the 1st January 2011, where guidelines are binding for supervisory authorities (unless they explain non-compliance) this seems to be necessary. The guidebook is mainly tailor-made for large, complex internationally acting banks, but should also be applicable for small and smallest local banks without any exemptions or safeguards. There is only one passage in the guidebook with regard to the CRO function where CEBS indicates a certain flexibility regarding smaller banks. Besides that any guidance for smaller banks regarding the implementation is

missing. This leads to a huge legal uncertainty on the one hand and bears the danger of different implementation of national supervisors and therefore endangers level-playing field. Thus we would appreciate more guidance with regard to the supervisor's expectations with regard to the implementation of this guidebook in smaller banks.

1.4. Scope of Application

We would like to point out that the scope of application (group and solo level) should be elaborated in more detail. We fully understand that local legal necessities and supervisory requirements have to be taken into account as well as the group level. Furthermore there are different national legal provisions with regard to internal governance as well which have to be considered. But we would like to encourage CEBS to go one step further heading for more convergence of supervisory practices within these different legal frameworks. Thus we are of the opinion that - where possible and applicable – decision should not be delegated by the guidebook to the national supervisors but CEBS should go for a common solution and establish a convergent supervisory practice (e.g. with regard to necessity of independent directors in the supervisory function of the management board).

2. Detailed Comments

Going now to the details we would like to raise the following comments.

Importance of internal governance

Point 4 and 5

We are of the opinion that these two statements regarding the (non-)sufficiency of internal governance arrangements and the weak oversight of the board are conceived in a too general manner. There were weaknesses as mentioned in Point 4 and 5 of the introduction in various banks. But we do not agree with the general conclusion of CEBS stating that all banks did suffer these mentioned weaknesses. Thus we would propose to soften these statements, as for example CEBS has already incorporated in point 7.

Implementation of the Guidebook

Point 21

Due to the ongoing discussions regarding the systemically importance of banks it is not clear what is meant by "large and complex institutions". Thus we would propose to delete this last part of the sentence to avoid any misunderstanding with regard to the scope. We are of the opinion that point 22 (principle of proportionality) covers the issue of implementation as a whole. Thus in our opinion there is no need for a reference to "large and complex institutions" in point 21.

Principle 4 – Non-standard or non-transparent activities**Point 42**

From our point of view the relations between the institution and its customers are not a question of Internal Governance. Apart from that the institution's task in connection with the performance of certain activities for its clients is unclear and would have to be explained more precisely.

Principle 8 – Commitment, independent and managing conflicts of interest**Point 58**

In our opinion a time commitment is only applicable to the management body's supervisory function since the management body's management function is normally a full-time occupation. Furthermore we doubt whether this statement is reasonable due to the fact that responsible candidates should be able to estimate the demanded time when they apply for the membership.

Point 59

In consideration of the different independence criteria for members of management bodies in generally recognized national Corporate Governance Codes, CEBS should note that these definitions vary in detail.

Apart from that the Guidebook's requirement for an appropriate selection of independent members and sufficient collective expertise may conflict with certain rules that limit the number of non-executive members of the management body.

Principle 9 - Qualifications**Point 64**

The process to ensure the management's sufficient qualification should be figured out comprehensively. The Guidebook does neither answer whether the institution or the supervisor is the addressee of this rule nor how this process works in the view of CEBS.

Principle 13 – Internal alert procedures**Point 85**

We do not see the necessity besides internal "whistle-blower"-procedures to additionally foresee a procedure for informing directly the supervisory authority by the staff of a credit institution. In our opinion it is in a first stage the duty of the credit institution itself to solve such cases internally. Thus "whistle-blower"-procedures are appropriate. If deemed necessary after its own investigations (inter alia triggered by the communication by the staff), the credit institution should decide on its own if information towards the supervisory authority is necessary or not.

Furthermore – according to the further explanations within the draft – obviously the working group and CEBS could not agree that this is best or good practice to have some possibilities and procedures in place. Thus we would propose to delete this point as a whole due to the fact that the guidebook should comprise only best practice.

Principle 16 Assessment of the internal governance

Point 95

An annual review of the internal governance framework and its implementation seems to be at least for smaller institutions an inappropriate burden. Proportionality should apply also to this principle. CEBS should therefore reduce this requirement to a “periodical” assessment.

Principle 30 - Internal Governance transparency

The scope of application of the transparency requirement should be aligned with Pillar III requirements of the CRD. Thus as a principle the transparency requirement should be fulfilled on group level by the parent institution. Exceptions, where also subsidiaries are obliged to publish the information concerning internal governance could be considered, where the supervisory authority assessed the subsidiary as significant according to Art 72 of the CRD.