

cp44@c-eps.org

**Division Bank and Insurance**  
**Austrian Federal Economic Chamber**  
Wiedner Hauptstraße 63 | P.O. Box 320  
1045 Vienna  
T +43 (0)5 90 900-3131  
F +43 (0)5 90 900-272  
E [bsbv@wko.at](mailto:bsbv@wko.at)  
W <http://wko.at/bsbv>

Your reference, Your message of	Our reference, contact person	Extension	Date
	BSBV 115	3131	21 December 2010

## **CEBS - Consultation Paper on the Guidebook on Internal Governance - CP 44**

The Bank and Insurance Division of the Austrian Federal Economic Chamber legally representing all Austrian Credit Institutions would like to comment on CEBS's Consultation Paper on the Guidebook on Internal Governance (CP 44) as follows:

The CEBS Consultation Paper on the Guidebook on Internal Governance is one of the many measures that are being taken or have been taken at European and national level pertaining to corporate governance.

The actual implementation of any internal corporate governance depends on the structure, size and business model of the company concerned. In light of the strong discrepancies between the different national provisions, corporate governance rules should be sufficiently flexible and rely both on the comply-or-explain principle and the proportionality principle. We appreciate the Consultation Paper's (Rule 22) affirmation that the proportionality principle must serve as the basis for the provisions, since no one-size-fits-all solution exists. We would, however, propose adding a further clarification in the CEBS principles to point out that these principles are to be understood as comply-or-explain principles.

Given the varying structures existing in Europe, it would be necessary to make a clear distinction between one-tier and two-tier systems. The CEBS Consultation Paper does give recognition to the difference between the two systems, but no solution is provided, since the functions of the boards, i.e. "management" and "supervisory" functions, are used as sole points of reference. Rule 16 states that the tasks or responsibilities are not explicitly allocated to any of the two function, but rather that it is for the national legislation to determine which body/which function shall take on the respective task or responsibility. The Rule goes on to specify that the crux is to have the task or responsibility fulfilled. Generally, we agree with this solution. What needs to be considered, however, is that some areas may

not be regulated by national law and this may make implementation difficult. What is more, consultations may be carried out on the assumption of different requirements, which would make the opinions difficult to compare.

Generally, we welcome the strengthening of risk management as envisaged by the CEBS Consultation Paper. If principles 22 and 23 of the CEBS Consultation Paper aim to subordinate the envisaged risk control function to the management body in the hierarchy, we ask you to consider the following: Principle 23, Rule 132 stipulates that risk management must be consulted before the management body can make any decision. This would run contrary to any independent management of the institution by the management body. Particularly in the example referring to changes to the senior management - cf. Principle 23, Rule 132 - it is not clear why any change to those responsible for human resources should have an impact on the bank's risk management. What needs to be made clear is that the management body is responsible for the institution's decisions (cf. also Principle 23, Rule 129 - "the accountability for the decisions taken remains with the business and support units and ultimately with the management body"). This, however, would also give the management body the right to decide whether it wishes to consult risk management before making a decision or not - compulsory involvement of risk management in the decision-making process would not be compatible with Austrian law since the management board is required to manage the institution independently and enjoys a decision-making monopoly. Independence in decision making also comprehends independence to decide who is to be involved in a process and who not. The decision-making process laid out in the CEBS Consultation Papers should therefore be reconsidered.

Rule 144 intends to give the CRO a veto right in the decision making. This would be incongruous with Austrian law, which prescribes the majority principle for votes in the management board.

Rule 170: In Austria, related parties transactions must be disclosed in the financial report/Notes. In our view, an "explanation of how they could influence the entire organisation" does not appear feasible, as there would be no possibility to predict this, and it is not entirely clear what "influence the entire organisation" means. For this reason, we would request deleting this part of the sentence.

Sincerely,

Dr. Herbert Pichler  
Managing Director  
Division Bank & Insurance  
Austrian Federal Economic Chamber