



VERBAND DER AUSLANDSBANKEN IN DEUTSCHLAND E. V.
ASSOCIATION OF FOREIGN BANKS IN GERMANY

INTERESSENVERTRETUNG AUSLÄNDISCHER BANKEN, KAPITALANLAGEGESELLSCHAFTEN, FINANZDIENSTLEISTUNGSINSTITUTE UND REPRÄSENTANZEN
REPRESENTATION OF INTERESTS OF FOREIGN BANKS, INVESTMENT MANAGEMENT COMPANIES, FINANCIAL SERVICES INSTITUTIONS AND REPRESENTATIVE OFFICES

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Response to the CEBS consultation paper CEBS CP09 „Guidelines for Co-operation Between Consolidating Supervisors and Host Supervisors“

Dear Sir or Madam,

The Association of Foreign Banks in Germany is pleased to have the opportunity to comment on your Consultative Paper CP09 (hereinafter referred to as “Guidelines”).

We represent foreign banks, investment management companies, financial services institutions and representative offices in Germany. The activities of our members are not confined to banking and financial services within Germany, to a large extent they involve cross-border activities. In view of this, we would like to respond to your paper from the cross-border perspective of our members.

I. Overview

The Association very much welcomes the objectives and the content of the Guidelines. The proposed framework is, in our view, practicable and effective by setting out a system that will make it possible to achieve the desired goals.

1. In times of Basle II and CRD, convergence of supervisory practices and standards is a central issue. An enhanced co-ordinated approach to supervision should be achieved and information sharing as well as co-operation between the respective supervisors are the basis for this. A better understanding of each other's methods and approaches will inevitably lead to a greater commonality in supervisory standards. This will increase efficiency of supervision and avoid duplication of work for the cross-border banking groups. The Guidelines will support the integrated, risk-based and co-ordinated approach to supervision needed by both supervisors and supervised banking groups.



2. We welcome that the Guidelines provide for a clear division of competencies and responsibilities between host and consolidating supervisor, while at the same time respecting the supervisory powers of the licensing authority. This division will greatly facilitate the functioning of the proposed framework. We particularly welcome the leading role of the consolidating supervisor. In our opinion, it is crucial that one supervisory entity is entrusted with the lead and organisation of the co-ordination and the co-operative process. This will allow for a consistent and uninterrupted flow of information between the supervisors involved and for a centralised monitoring of information exchange and co-operation, thereby limiting the burdens for the supervised banking groups.
3. In our opinion, it is useful and necessary to adhere at European level to the principles of home country supervision and of mutual recognition of supervisory measures. In view of this, we regard it as a great achievement of the Guidelines that they determine how home and host supervisors should co-operate in respect of branches and that they provide for the clear division of responsibilities between consolidating and host supervisor as set out in Para 57 of the Guidelines:

“Given the legal allocation of responsibilities, the intervention of host branch supervisors can only pertain to the conventional performance of specific tasks normally entrusted to the consolidating supervisor **on explicit demand of the latter**; his intervention should never entail any additional burden on the group or the entity concerned.” (emphasis added)

II. Proposals

Although we greatly support the Guidelines, we would nevertheless like to make the following proposals which, in our opinion, would further improve the functioning of the framework and strengthen the mutual trust between supervised entities and supervisors.

1. We propose that the supervised group should have access to the written arrangements between consolidating and host supervisors specifying their respective roles in the supervisory co-operation. Furthermore, it should be integrated to a greater extent in the co-ordination and co-operation process, especially in the dialogue between the supervisors when allocating tasks and establishing a common strategy for the supervision of the group. Such increased involvement of the supervised group would augment the efficiency of supervision:
 - For once, the group knows how and which information has been provided to which supervisor.
 - It also will be in the position of anticipating which supervisor will require which information, thereby decreasing to at least some degree the need for co-ordination between the supervisors involved and further avoiding the duplication of work.
 - The group would be enabled to communicate which and to what extent supervisory differences exist and thereby permit the supervisors to better assess the need for convergence and alignment of standards and practice.
 - Furthermore, the group would have some control as to whether the supervising authorities exceed the scope of the tasks entrusted to them by the requesting authority.
2. The Guidelines will provide for an improved flow of information and an increased knowledge and acceptance of each other’s supervisory practices. This strengthened co-operation should have positive side-effects with regard to the treatment of intra-group outsourcing.¹

Presently, the decision of a group to have certain tasks performed by a single entity of the group for all or some other group entities results in the following: Each entity of the group outsourcing the relevant

¹ The following comments are also of relevance to the consultation on the CEBS Paper CP02 on High Level Principles on Outsourcing.



task would have to set up a legally binding and detailed outsourcing arrangement which involves time, effort and, above all, significant costs. Each entity would have to notify the intended outsourcing to its local supervisor and to draft the outsourcing contract in a way that meets the individual requirements of the respective supervisor. In addition, each entity having outsourced a task would have to monitor the service providing entity, even though it would be best if the parent undertaking monitored the service providing entity on behalf of all its subsidiaries.

With view to the increased co-operation and co-ordination envisaged by the Guidelines, we have the following proposals:

- It should be sufficient if only the parent undertaking drafted a detailed outsourcing agreement (model agreement) and notified it to its consolidating supervisor. The parent undertaking would inform its consolidating supervisor of its entities participating in the intra-group outsourcing and wishing to join the model agreement. As stipulated by the Guidelines, the consolidating supervisor and the other supervisors affected could agree on the terms and contents of an outsourcing agreement acceptable to all of them. Thus, further convergence can be reached with regard to the practices and standards of the supervisors and the local group entities would be disburdened from the lengthy and costly procedure of setting up an individual agreement in consultation with their respective supervisor. This would avoid multiplication of work.
- Due to the fact that the official language of the affected supervisors differ, the institutions participating in the intra-group outsourcing would incur significant translation costs when notifying the outsourcing, should they have to submit the model outsourcing agreement they joined in the respective official language of their supervisor. We therefore suggest that one official language, most appropriately the English language, be accepted by the supervisors concerned for the wording of the outsourcing agreement.
- As to the need of monitoring of the service provider by the outsourcing entity, it would be best if it were the responsibility of the parent undertaking and if only the consolidating supervisor performed supervisory tasks. The other supervisors could request information from the consolidating supervisor and have him conduct the necessary supervision on their behalf as set out in the Guidelines. Should on-site inspections in the outsourcing service provider's premises be necessary, these could be conducted upon demand of the consolidating supervisor by the respective supervisor in whose territory the service providing entity is based.

Should you require any further information or wish a personal discussion, please do not hesitate to contact us.

Best regards,

Jens Tolckmitt

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