

5 August 2008

## **COMMITTEE OF EUROPEAN BANKING SUPERVISORS PUBLIC STATEMENT OF CONSULTATION PRACTICES**

The Committee of European Banking Supervisors was established on 1<sup>st</sup> January 2004 by a decision of the EU Commission (2004/5/EC). Its tasks include advising the Commission on banking regulation, promoting the consistent application of EU directives and the convergence of supervisory practices throughout the Community, and enhancing supervisory cooperation.

The Committee will consult extensively and in an open and transparent manner with market participants, consumers and end-users of banking services. The aims of consultation are to benefit from the expertise of market participants, consumers and end-users in identifying, assessing and analyzing regulatory issues and possible solutions, to promote understanding of the Committee's work and its role and, ultimately, to build consensus where possible between all interested and affected parties on what regulation or supervisory practice is appropriate.

To deliver these aims, a flexible and proportionate approach to consultation that can be adapted according to the significance of an issue is required. The Committee's consultation practices are set out below.

### ***Who is consulted***

1. The Committee will generally:
  - i) target the full range of interested parties, including market participants (e.g. credit institutions, investment firms, etc), consumers and other end-users, as well as their representative associations;
  - ii) make consultation proposals, related documents and key dates for the consultation widely known and available through appropriate means, in particular the Internet; and
  - iii) consult at national, European and international levels.
2. When the Committee chooses to target its consultations at market participants and their representative associations only, in accordance with Article 11, such targeted consultations will always be announced in accordance with Article 1, ii). This will be followed by the publication of the Committee's final decision on the same topic.
3. The Committee will publish an annual work programme indicating whether a full or targeted consultation is intended on each area of

anticipated work in accordance with Article 1, ii). If a request to be consulted on a particular area is subsequently received from another party, this request will be granted if it fits in with the time schedule set out in the work programme. The schedule of workstreams, indicating consultation periods, will be updated quarterly.

### ***Areas of consultation***

4. The Committee will consult on all its work in the area of advising the Commission on draft implementing measures for European legislation in the field of banking supervision (advice on level 2 issues).

5. The Committee will also consult on its work in providing guidelines, recommendations, standards and general advice and their related amendments (work on level 3 issues) in the area of:

- i) the consistent application of Community directives;
- ii) the convergence of Member States' supervisory practices;
- iii) enhancing supervisory cooperation; and
- iv) the overall structure of information exchange arrangements.

The development of guidelines, recommendations, standards and general advice (and their related amendments) will be subject to an impact assessment methodology, as approved by the Level 3 Committees. With amendments to existing Guidelines, the depth and intensity of the impact assessment methodology to be carried out (and even whether it is needed) will be determined by the type of amendment.

6. The actual supervisory practices and actual exchanges of information, as ongoing work, will not be subject to consultation, for various reasons, including the issue of confidentiality.

### ***Modes of consultation***

7. The Committee will:

- i) provide an opportunity for interested parties to make submissions on receipt and publication by the Committee of a mandate from the European Commission;
- ii) produce reasoned consultative proposals, reflecting all relevant aspects of the issues at stake;
- iii) include in proposals preliminary information on their impact whenever available;
- iv) when necessary, release its thinking at various stages, including via the release of draft papers with initial questions or requests for comments in accordance with Article 1, ii), prior to a formal consultation period;
- v) establish consultative groups of technical experts if, prior to the formal consultation, informal discussions are planned (experts will be selected by the Committee and by the Consultative Panel); and

- vi) use a variety of means, including the Internet and written consultations, public hearings and roundtables (e.g. prior to a public consultation when needed), and, if necessary to deepen the Committee's understanding, bilateral meetings with affected parties.

### ***Timing of consultation***

8. The Committee will:

- i) publish any provisional or formal mandate received from the European Commission as soon as practical after receipt, in accordance with Article 1 ii);
- ii) organise upon request informal discussions at an early stage with those most likely to be directly affected;
- iii) consult in line with the cycles defined under Article 9 to enable the Committee to take the responses into account; and
- iv) provide the consulted parties with three months to respond in each formal consultation period.

9. CEBS will, unless article 11 is applicable, follow the following standard timelines:

#### *Standard Timeline for advice on level 2 issues:*

- 1) 4 months after receipt of the mandate for CEBS to draft a consultation paper, with possible informal meetings with technical experts recommended by the Panel;
- 2) 3 months public consultation;
- 3) 2 months for CEBS to analyze the comments received; and
- 4) 1 month for CEBS to prepare its final opinion and to submit it to the Commission.

If work is based on a provisional mandate or if it concerns a controversial matter, and it is possible within the given timescale, part 4 of this timeline will be replaced by a 1 month period for preparation of a new consultation document and:

- 5) 1 month for a second round of consultation; and
- 6) 3 months for CEBS to prepare a final opinion and submit it to the Commission.

#### *Standard Timeline for work on level 3 issues:*

- 1) Publication of the timeline for work on a level 3 issue.
- 2) preparation of a consultation paper, with possible informal meetings with technical experts recommended by the Panel;
- 3) 3 months public consultation;
- 4) 2 months for CEBS to analyze the comments received; and
- 5) 1 month for CEBS to prepare a feedback document and final opinion and to publish them.

If it concerns a controversial matter, and it is possible within the given timescale, part 5 of this timeline will be replaced by a 1 month period for preparation of a new consultation document and:

- 6) 1 month for a second round of consultation; and
- 7) 3 months for CEBS to analyze the comments received and to prepare the final document.

### ***Follow-up to consultations***

10. The Committee will:

- i) give due consideration to responses received;
- ii) make public in accordance with Article 1, ii) all responses to any of its ongoing or finalized consultations, unless the respondent requests otherwise;
- iii) publish a summary of the responses received and a reasoned explanation addressing all major points raised as feedback in the attached format, in accordance with Article 1, ii);
- iv) consult for a second time if the response to the first consultation reveals significant problems, or if revised proposals are radically different from the original proposals on which the consultation was based; and
- v) publish all formal proposals and all advice given to the European Commission in accordance with Article 1, ii).

### ***Amendments to standard consultation procedures***

11. The Committee will as a rule apply the standard consultation procedure. Amendments may be made to the standard consultation procedure in the following circumstances:

- if the months of July and/or August or mid-December to mid-January are included in any standard period (either for technical work, for consultation or for feedback), the set term is lengthened by one month;
- if shorter timelines are set by third parties for work by CEBS;
- if there is no time constraint;
- if a provisional instead of a formal mandate is received;
- if it concerns technical advice or technical level 3 instruments with an impact only on a specific set of market participants;
- if the documents include information protected by e.g. secrecy regulations; or
- if guidelines, standards or recommendations previously submitted to a full consultation process are subject to drafting or limited amendments when the procedures in the annex will be followed.

### ***Final provisions***

12. If it is not possible for the Committee to follow the principles described above, the Committee will publicly explain its reasons.

13. When necessary, the Committee will review this statement of consultation practices.

## ***Annex: Procedures for amendments of guidelines, standards and recommendations***

1. All amendments to the CEBS guidelines, standards and recommendations will follow, as a general principle, the standard consultation process established with the standard timeline on Level 3 issues included in paragraph 9. Such amendments would include e.g. changes to a significant part of the CEBS guidelines, standards and recommendations or improvements in CEBS guidelines, standards and recommendations based on the experience of CEBS members in the practical application of these guidelines, where due to the relevance of the amendments, the need for a proper consultation process with external parties is more important than the need for a flexible process.

2. Based on current experience, possible exceptions to this general principle are:

- i) limited amendments: including e.g. amendments, additions or deletions to the guidelines, standards and recommendations that are deemed necessary to reflect technical changes in the underlying regulations (for example changes in the Guidelines on Financial Reporting due to changes in IAS/IFRS) or that just aim at précising or completing the existing guidelines (e.g. changes in the templates of the Guidelines on Supervisory Disclosure in order to increase the comparability among national implementations); and
- ii) drafting amendments (improvements): including e.g. correction of typos, deletion of duplications, additions to compensate for obvious omissions that do not change substantially the content of the Guidelines, corrections in references to external papers when those are changed and the like.

3. The decision on whether a proposed amendment can be considered limited or even a drafting amendment is a matter of judgment. The decision to depart from the standard consultation process will be taken by CEBS, after consultation with the Consultative Panel. The views of the Panel and the subsequent decision should take into account all anticipated amendments to a set of guidelines, standards, recommendations and general advice. This implies that the decision on the materiality of the amendment will be made by comparing the new suggested version of a CEBS guideline, standard, recommendation and general advice with the existing one.

4. Determination of the type of amendment decides the process to be followed in these cases.

5. The process for limited amendments is:

- a). CEBS will decide whether a contemplated amendment is limited (which would also impact on the depth and intensity of the necessary impact assessment methodology to be carried out);

- b). the proposed changes will be submitted for consultation to the Consultative Panel, with CEBS' views on the typology of amendment;
- c). contacts by CEBS experts at an early stage (before the consultation process), and during the consultation period, with representatives from the industry are encouraged in order to take a balanced view on the materiality of the proposed amendments;
- d). if the amendment is finally considered as limited, it will be submitted to a 1 month public consultation. Following the consultation, and after analysis of the comments received CEBS will prepare within 2 months the final amendments to the guidelines, standards, recommendations and general advice together with a feedback document. The foreseen periods would also take into account the circumstances included in paragraph 11, first bullet point; however
- e). a further revision may be necessary if, according to the responses received, it is finally concluded that the proposed amendments are a controversial matter. In such cases, CEBS will apply the provisions included in paragraph 9, sub-paragraphs 6-7.

6. The process for drafting amendments is:

- a) CEBS will decide whether a contemplated amendment is a drafting amendment only (which would also impact on the decision on the impact assessment methodology to be carried out);
- b) the proposed changes will be submitted for consultation to the Consultative Panel, with CEBS views on the typology of amendment;
- c) if the amendments are finally considered only to be drafting amendments, then the proposed amendments will be circulated to CEBS members who will have two-weeks to approve them (or make any objections known) in accordance with CEBS internal "red flag" procedure.

7. Amendments to guidelines, standards and recommendations will in all cases be documented as follows:

- a). a clean version will be posted on CEBS' public website;
- b). a link will be provided to documentation that identifies the amendments made to the guidelines, standards, recommendations and general advice.
- c). if there has been a public consultation, a feedback document will be available; it will summarize the comments received and a reasoned explanation addressing the major points made in response; and

d). when CEBS has decided to follow the alternative process included in paragraphs 5 and 6, it will publish the reasons for the decision to do so as well as the views of the CEBS Consultative Panel, according to paragraph 12 of the document "Public statement of consultation practices"

8. Required changes to CEBS guidelines, standards and recommendations will only be made once a year in order to provide stable guidelines, standards and recommendations.