



Consultation Paper
The role and tasks of CEBS
(CP08)

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Executive summary

1. This paper explains CEBS' overall approach to meeting its main aims and objectives, as well as the tools at its disposal to fulfil these, taking stock of the experience gained over the first year of its existence, and looking ahead at how CEBS intends to address near-term challenges.
2. Internationalisation, consolidation and the centralisation of key business functions are the main market trends affecting the environment in which CEBS started operating. On the other hand, the majority of the 8,000 credit institutions in the EU are operating on a national, or even local, scale. The market trends create a misalignment between legal and operational structures of cross-border groups and present several challenges to the smooth functioning of a decentralised supervisory framework and to the operational implementation of the concepts contained within the banking directives. The existing diversity in markets suggests that the EU does not have an overarching need to strive for full regulatory uniformity in the banking field, although local rules should not disrupt progress towards convergence of supervisory practices or unbalance the EU-wide level playing field.
3. The committee considers that its main objectives, when carrying out its tasks, are to promote cross-border supervisory co-operation and the safety and soundness of the European financial system in an effective and efficient way, through (i) encouraging good supervisory practices, to be implemented in a convergent and consistent manner; (ii) promoting an efficient approach to supervision, which avoids unnecessary duplication of tasks; (iii) contributing to effective legislation, through sound technical advice, open consultations and convergence in practices; and (iv) working towards a level playing field across the EU, by adopting approaches that are proportionate to the nature, scale and complexity of the business of supervised entities and paying attention to the regulatory burden. CEBS' activities to promote stability and sound risk management practices are also expected to bring benefits for consumers and end-users of financial services. CEBS will carry out its tasks in a way that ensures it meets its obligations on consultation, accountability and transparency. As the boundaries between financial sectors are becoming less marked, great attention will be paid to cross-sectoral aspects, intensifying the dialogue and the co-operation with the other Level 3 committees, CESR and CEIOPS.
4. This paper elaborates on how the performance of the three tasks assigned to CEBS can contribute to the fulfilment of its objectives, and discusses the tools that are being used in carrying out these tasks.

Contributing to effective EU legislation: CEBS' role and capacity to act in this area will be mainly determined by requests from the European Commission. In order to ensure that proper use is made of the possibilities provided by the Lamfalussy approach, it is important that CEBS' mandates from the Commission are drafted sufficiently widely to give scope for advice on substantive issues rather than simply

information-gathering. As the bulk of Community legislation in banking is not framed within the Lamfalussy approach and lacks therefore a clear distinction between framework principles and technical details, CEBS proposes that a distinction is made in practice between mandates on more general, political issues, for which the Commission and the European Banking Committee should play a pivotal role, and those dealing with technical issues, which should give CEBS the appropriate scope to develop detailed proposals.

Promoting a consistent approach to banking supervision: in order to facilitate an integrated banking market, it is important to avoid unnecessary inconsistencies in national implementation and in supervisory practices, while respecting the need for flexibility and supervisory judgement and respecting local diversity. This is a key task for CEBS, which will be carried out through tools promoting convergence in practices, developing common frameworks for supervisory reporting, disclosure of choices made in national implementation and supervisory practices, and fostering the emergence of a common supervisory culture via training and staff exchange initiatives. CEBS has already made significant progress in this area, in particular exploiting the opportunities presented by the future capital requirements regime. Although not legal instruments, CEBS' guidelines and standards carry a good deal of weight, as they are developed by supervisors and are based on consensus. They should be seen as a reference point for all supervisory authorities. Supervisory authorities are expected to achieve a greater degree of commonality in supervisory practices, beyond the minimum set in the directives.

Cooperation and information-sharing between banking supervisors: There are various tools that CEBS will use to achieve its goals in this area, including developing ex ante guidelines and ex post review mechanisms, facilitating regular information exchange, creating ad hoc information-sharing networks, and developing effective operational network mechanisms. CEBS' efforts will first focus on ex ante shaping of the co-operation framework and will then turn to the practical use of the frameworks for specific cases, later reviewing how this is working in practice.

5. The Lamfalussy framework provides CEBS with a flexible and adaptable framework within which it can deliver its objectives. CEBS will aim to exploit fully the tools at its disposal. There is an ongoing debate about possible additional tools for the level 3 committees, and work is underway in other committees on elements such as peer review and mediation. CEBS does not currently perceive a pressing need to develop further tools to promote its objectives, but it remains open to discussing whether it is appropriate to go further.
6. CEBS plans to have an annual review to reassess its work programme and – if necessary – to adapt its strategy and objectives. CEBS will develop a methodology to help to assess the progress and impact of its work. Given the complexity of the operating environment, the number of interested

parties, and resource constraints, CEBS must be able and willing to adapt its priorities and flexible enough to adapt to changing needs.

7. The paper has three main parts: an overview of the framework within which CEBS operates, and the various market trends that impact on it; the objectives, tasks and tools of the Committee; and a preliminary view on how CEBS' progress towards its objectives can be evaluated and assessed. The annex explains in detail how the various tools are currently being used.

Request for comments

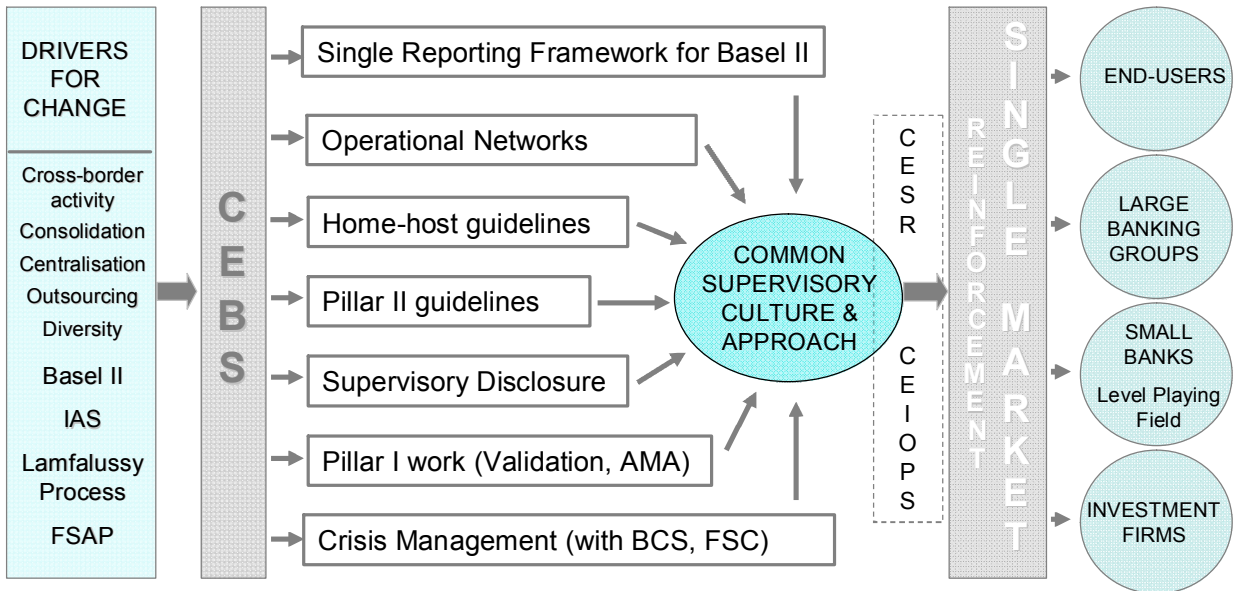
8. CEBS would welcome views on how well it is focussed on delivery, how it can better align its work to the wider needs of its various constituents, and what improvements it could make at this stage to prepare for the assessment of the Lamfalussy structures in a few years time. Specifically, CEBS would welcome feedback during the public consultation of this paper on the questions highlighted in the boxes.
9. The consultation period will be four months: the usual three months and an additional month because the summer months make up part of the consultation period. Comments should be submitted by Friday 28 October 2005 to CP08@c-eps.org.
10. Comments will be published on CEBS' website (unless a respondent requests otherwise). After the consultation is closed an explanation will be published of how the major points raised were addressed.

1. Introduction

11. This paper considers the objectives and tasks of CEBS, as well as the tools available to fulfil these, taking stock of the experience the Committee has gained over the first year of its existence, and looking ahead at how CEBS intends to address near-term challenges. It is not a strategic paper, but rather has the aim of communicating CEBS' views about its role in the current setting and at this point in time.
12. CEBS has recently been created while the legislative environment within which it operates is relatively mature (although it is to be revised in the near future through the recast Capital Requirements Directive, CRD). CEBS also operates within a complex and diverse set of banking and investment firm structures. As such it is largely focussed on improving and fleshing out existing rules and ensuring that its members have a framework for convergence of national supervisory practices.
13. CEBS is conscious that its progress is being assessed continually by a large number of external bodies (not least the European Commission and European Parliament, European finance ministers, the financial services industry, and end users), and also that the application of the Lamfalussy framework to banking will be assessed formally within the next three years. This paper is, in part, designed to help draw out the various strands of CEBS' current thinking, and to provide interested observers and assessors with a

framework in which to help the Committee refine its objectives and tools to better meet their expectations where relevant.

14. The chart below highlights the various factors and drivers for change that CEBS needs to take into account and the work programmes it has initiated as a result of these demands.



2. Framework and market trends

2.1 Origin of CEBS and its legal framework

15. CEBS was established on 1 January 2004, as part of the extension of the Lamfalussy approach.¹ As the Commission has noted, the Lamfalussy processes do not change the existing national or EU structures legal and advisory structures, but they do adapt the EU structures and clarify the roles and responsibilities of the various players to give better advice to the legislative authorities, and promote more efficient cooperation among national supervisory and central banking authorities.

¹ Commission Decision 2004/5/EC

16. These roles include a clear distinction among:
 - a. Providing advice to the Commission on legislative texts (with appropriate consultation and cost benefit analysis).
 - b. Providing advice more generally to the Commission and the European Banking Committee (EBC).
 - c. Seeking to establish supervisory convergence, such as guidelines within the terms of a Directive, and standards on areas not covered in EU legislation.
 - d. Seeking to derive benefits from information sharing and other cooperation among supervisors more generally.
 - e. Working with other "level 3" committees.
17. Although CEBS is a relatively new development in the EU's infrastructure - and has had to develop a great deal of infrastructure and operating methods in a very short space of time - it builds on a much a longer and well established framework of supervisory cooperation on banking issues, going back more than thirty years. CEBS was able to have intensive discussions, and generate papers from the start, precisely because banking supervisors are used to working together. And given that there was already a very substantial and developed body of European legislation in banking, CEBS was able to focus from the start on the very practical issue of convergence of supervisory practice (level 3).
18. CEBS accommodates within its membership the full set of national variations on structures for supervision and central banking, i.e. banking sector-specific supervisors, cross-sectoral supervisors, supervisory central banks, and non-supervisory central banks.

2.2 Market environment

19. CEBS is very conscious that it works within a dynamic environment. The EU's single market is not a static enterprise and various trends and starting positions can be observed in the banking sector:
 - Increases in cross-border business, industry consolidation at the national level, cross-border mergers, centralisation and outsourcing of key business functions. As a result, the legal structure of a financial group may not anymore have a one-to-one relation with its operational structure.
 - Set against this, CEBS notes that, of the more than 8,000 credit institutions in the EU, the large majority conduct their business on a national - and most frequently local - scale. Often these small institutions are operating under specific legal provisions, which are deeply rooted in local traditions and their diversity and richness matches the financing needs of the local economy.

20. These different factors present interesting challenges. The EU has a 'decentralised' supervisory framework based on national jurisdictions and a home-host structure. The banking Directives have long established minimum harmonisation, and given the banking sector its passporting rules, and the concepts of home and consolidated supervision. Nevertheless, for some large financial groups this basic regime is increasingly perceived as producing a misalignment between the operational and the legal organisation. These trends introduce an unprecedented challenge to supervisors, as risk-focused supervision needs to capture the risks at the level at which they are measured and managed. The risk management function is increasingly centralised for the largest institutions. But banking licences are national and enforcement can only take place within the jurisdiction of supervisors, making it important to strengthen the role of the consolidated supervisor.
21. Moreover, as long as markets are not fully integrated, some specific national rules may be required. Competition and diversity suggest that the EU does not have an overarching need to strive for full regulatory uniformity in the banking field (where minimum harmonisation has been the normal approach). On the other hand, local rules should not disrupt progress towards convergence of supervisory practices or unbalance the EU-wide level playing field.

3. CEBS' objectives, tasks and tools

3.1 General principles

22. The starting point for a description of CEBS' objectives, tasks and tools is the formal instrument that established the Committee, i.e. the Decision of the European Commission.
23. The Decision assigned three tasks to CEBS:
 - i. To advise the Commission in the field of banking activities (regulatory matters).
 - ii. To contribute to the consistent application of Community directives and to the convergence of Member States' supervisory practices throughout the Community.
 - iii. To enhance supervisory cooperation, including the exchange of information on individual supervised institutions.
24. In order to guide the way in which CEBS carries out its tasks and to help in determining the concrete subjects on which it should work, it is important to consider the context in which these tasks were assigned.
25. The decision to extend the Lamfalussy approach to the banking sector was taken by European Finance Ministers at the end of 2002 and supported by the European Parliament, on the basis of a report from the Economic and Financial Committee (EFC).
26. The EFC report indicated the following three objectives:

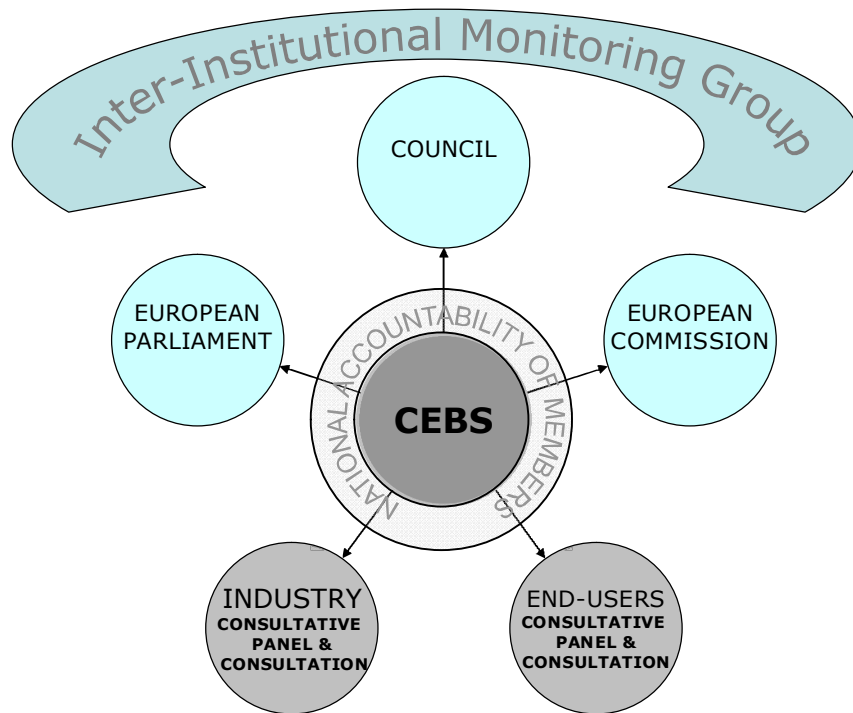
"Financial regulation must be able to adapt quickly to new market developments and practices. It must also facilitate the integration of the EU's markets, to bring benefits to consumers and enterprises alike, and to enhance the competitiveness of the EU's providers of financial services.

Whilst supervisory tasks are best performed as close as possible to supervised entities, an environment of increased cross-border and cross-sectoral activity requires arrangements to facilitate necessary information flows. Strengthened cross-border and cross-sector co-operation amongst competent authorities is thus essential for the preservation of financial stability.

Greater convergence of supervisory practices can contribute to the single market and also enhance the efficiency of national supervisory authorities involved in monitoring cross-border financial institutions."

27. There is a clear read-across from these objectives to the three tasks assigned to CEBS by the European Commission Decision. CEBS aims to act, indirectly, as an enabler of the single market.
28. In this context, the Committee considers that its main objectives, when carrying out its three tasks, are to promote cross-border supervisory cooperation and the safety and soundness of the European financial system in an effective and efficient way through:
 - a. Good practice: adopting good international supervisory practices and encouraging its members to implement these in a convergent and consistent manner.
 - b. Efficiency: promoting an efficient approach to supervision that avoids unnecessary duplication of tasks.
 - c. Effective regulation: contributing to better and more effective regulation through sound technical advice and convergence of supervisory practices.
 - d. Level playing field and proportionality: working towards a level playing field across the EU, to underpin competition between different sized credit institutions, and between them and investment firms, promoting a proportionate approach and minimising the regulatory burden.

Accountability and transparency



29. CEBS will carry out its tasks in ways that ensure that it fully complies with its obligations on:

- a. Consultation: achieving consensus and buy-in from industry and market practitioners and end-users, by issuing good quality proposals, and ensuring comprehensive and regular consultation in an open and transparent way.
- b. Accountability and transparency: ensuring that it fully meets the needs of the Commission, European Parliament, and Council in a clear and open way.

30. CEBS will also promote stability and sound risk management practices in institutions, which should be to the benefit of all consumers and end-users, through safe and prudent management, and lower probabilities of solvency problems.

Question: Is this list of CEBS' wider objectives and considerations sufficient or should it be enlarged or amended to improve CEBS' approach to the regulatory framework?

31. It is also important to consider cross-sectoral aspects. The Lamfalussy structures have been implemented for banking, insurance and securities. While there are clear differences between these sectors, CEBS wants to underline the importance of co-operation and co-ordination with its sister

committees, not least to avoid duplication of work and promote an efficient and effective use of supervisory resources.

32. A very important part of CEBS' strategy is to ensure that it communicates its views and works with the other Lamfalussy committees, especially where overlaps already exist, or where issues affect all three sectors. Methods and procedures will be developed to ensure smooth and effective cooperation with CESR and CEIOPS in order to achieve the development, issuance and implementation of common guidelines and standards where it is appropriate. The aim is to achieve greater consistency in the regulation and supervision of financial institutions. For example, the committees are planning work on conglomerates, including a joint working structure to help roll-out the provisions of the Financial Conglomerates Directive. The three committees also have plans to work together, to ensure that they give consistent advice to the Commission, and plans for the highly practical issue of consistent implementation of legislation, e.g. on outsourcing, as set out in the Level 2 advice on MiFid and at level 3 for all three sectors; and internal controls (governance) in the CRD, MiFid and at level 3 for all three sectors. This co-operation consists primarily in regular and formal meetings of the chairs and secretary generals of the three committees, and in day-to-day contacts between the secretariats. The Committees intend to publish a Joint Statement of Co-operation later this year, setting out the practical working arrangements that have been agreed between them.
33. The following section gives a more detailed explanation of how CEBS' tasks can contribute to fulfilling its objectives and the tools that will be used in carrying out the tasks. The annex to this paper gives practical examples of the tools.

3.2 Contributing to effective EU legislation for the banking sector

34. Key areas of banking and banking supervision should be subject to effective harmonised legislative requirements at the EU level, in order to ensure that:
 - a. The freedom given to institutions to provide services across the EU operates effectively and does not undermine the safety and soundness of the financial system.
 - b. EU institutions can compete with each other on the basis of a level playing field.
35. Contributing to these efforts will help CEBS to meet its own objectives.
36. CEBS' role and capacity to act in this area will be mainly determined by requests from the European Commission, which is the only body with the right of initiative for EU legislation.
37. CEBS can contribute to ensuring that EU banking legislation is effective by providing advice to the Commission on EU legislation (Level 1 and 2), either on its own initiative or at the request of the Commission.

38. CEBS has now started to receive requests from the Commission in relation to the existing directives and is actively responding on issues such as:
- a. The use of prudential filters (in the context of the new International Financial Reporting Standards (IFRS) and the CRD);
 - b. National discretions (in the CRD);
 - c. Mergers and acquisitions (a review of Article 16 of Directive 2000/12/EC);
 - d. E-money (a review of Article 8 of 2000/46/EC); and
 - e. A review of Deposit Guarantee Schemes.
39. CEBS' advice will be published as it is delivered.
40. However, CEBS has received no requests from the Commission to develop technical detail (i.e. Lamfalussy Level 2 advice) for new legislation. It seems unlikely that the Commission will make such requests in the near future. The only piece of EU legislation envisaged for the foreseeable future – and one which will have a profound and far-reaching effect on institutions and prudential supervision (through the proposed CRD) – already contains all the necessary technical detail and will be subject to the full co-decision process. However, it should be possible, if necessary, to update parts of technical detail of the CRD in the future through the comitology procedure (Level 2 procedure).
41. While CEBS is aware of, and appreciates the reasons why this approach has been taken, it believes that it is important to make proper use of the possibilities provided by the Lamfalussy approach in the future. In this respect, it is important that CEBS' mandates from the Commission are drafted sufficiently widely to give scope for advice on the substantive issues, rather than simply information-gathering.
42. CEBS also notes that advice to the Commission may be supplied according to two different needs:
- a. On some topics, e.g. touching upon general principles and political guidance for Community legislation, the Commission itself might wish to rely on more extensive input and to directly shape the consultation with market participants and end-users of financial services. In such cases, CEBS could be asked to provide supervisory views, without necessarily consulting market participants or take a high profile in the shaping of the legislative proposals. In such case, a request for supervisory input instead of a formal call for advice could be addressed to CEBS.
 - b. On more technical issues, which have a direct bearing on the definition of prudential tools for the supervision of credit institutions and investment firms, CEBS should be given more formal mandates, envisaging enough time to properly conduct public consultations and to submit to the Commission well founded proposals.

43. If CEBS perceives that its objectives are hindered or impeded by legal or regulatory obstacles that lie outside its field of competence, it will flag this to the Commission. However, as the work on Basel 2 and the drafting of the CRD is mature, CEBS' role in these elements of the legislative process must be limited.

3.3 Promoting a consistent approach to banking supervision (“level 3”)

44. Notwithstanding the fact that EU banking directives mainly aim for a minimum level of harmonisation on key issues, these directives are not self-implementing. Each Member State implements them in the way that best suits its national legal systems and circumstances, albeit with an obligation to achieve the same end result. This is an important reflection of the subsidiarity concept, which states that only what cannot be achieved at national level should be tackled at the EU level. Furthermore, some supervisory practices may vary from country to country, for example for reasons related to the structure of the local market.

45. However, in order to facilitate an integrated banking market, it is important to avoid unnecessary inconsistencies in implementation and supervisory practices. It is one of CEBS' key tasks to try to reduce inconsistencies in such implementation and practices, where these are within the competence of the supervisory authorities, while respecting the need for flexibility and supervisory judgement and respecting local diversity.

46. By promoting a consistent approach to supervision across the EU, and by promulgating good practices in banking supervision and risk management, CEBS will contribute to:

- a. More effective and efficient banking supervision.
- b. Cost-efficient structures for the supervision of pan-EU institutions.
- c. A level playing field between institutions of different size and specialisation and between countries including those outside the EU.
- d. The competitive standing of the EU banking sector.

47. CEBS will work towards greater consistency of culture and approach through the following tools:

- a. Developing guidelines in relation to (existing or forthcoming) EU legislation.
- b. Developing standards on areas not covered in EU legislation.
- c. Proposing common reporting guidelines.
- d. Designing a framework for supervisors to make public disclosures (for example on implementation of EU legislation), in accordance with the requirements embodied in the draft CRD.

- e. Initiatives on training and exchange of staff between national authorities, to develop a common supervisory culture and expertise.
48. CEBS believes that this is a comprehensive and powerful set of tools. It has only just begun to explore how to maximise its use of them. CEBS will use and test the efficiency of these tools before exploring the possibility of using new ones.
49. Moreover, as the Commission has pointed out² the next few years should see the consolidation of the existing body of legislation, the effective transposition and enforcement of the rules, and more monitoring of their application. CEBS intends to match this stance, in the way it addresses its current priorities, i.e. the implementation of the CRD, the new IFRS framework, and the challenge of streamlining the relationships between home and host authorities.
50. In all this work CEBS has a strong commitment to consult, both amongst its own Consultative Panel and more widely in public consultations. CEBS is aware that some in the industry feel that the volume of work may create bottlenecks at particular points in time and that more effort should be attached to the scope and timing of convergence work. CEBS will endeavour to manage the flow of projects and seek the advice of its Consultative Panel.
51. CEBS has already made significant progress in this area in its first year. It has made, or is in the process of making, a number of proposals for supervisory guidelines and standards, in particular exploiting the opportunities presented by the future capital requirements regime. While CEBS can assess the relevance of its output, it will be some time before it can fully measure the impact, especially because most of the guidelines and standards will only come into place with the implementation of the CRD, i.e. from the beginning of 2007. However, the consultation and the dialogue with the industry, and the structuring of co-operation between the authorities involved in the supervision of specific groups, is already giving CEBS its first feedback and allowing it to check whether there is a need for adjusting the direction of this process.
52. CEBS believes that its work is already having a positive impact in a number of ways, e.g. by setting out the intended approaches to the supervisory review process (i.e. Pillar 2) all institutions and supervisors in the EU are now using a common language and working from a common starting point. CEBS will need to review the impact of this work in order to make sure that it is meeting its objectives in this area.
53. The Directives are legal instruments and normally set minimum levels of harmonisation (although occasionally they also set maximum harmonisation levels). CEBS guidelines and standards are not legal instruments, but they clearly sit within the legal framework created by the Directives, and by common consent of the members they carry a good deal of weight. They should be seen as a reference point for all supervisory authorities. CEBS'

² Green Paper on Financial Services Policy 2005-2010, COM(2005)177

guidelines are designed to take its members beyond the minimum set in the Directives and aim to bring level 3 practices together.

54. CEBS' view is that level 3 outputs have a good chance of success for the following reasons:
- a. They are based on consensus, which means that all supervisors have agreed and signed-up to them. This makes the chances of successful application higher.
 - b. They are not "imposed" by an external body, but rather developed by supervisors themselves.
 - c. They provide detailed guidance - which has been carefully constructed - on new areas, such as those covered by the CRD, thus facilitating the implementation of these aspects in each country.
 - d. The very process of developing the outputs, and the detailed discussions needed for technical work, brings together the views of members and technical experts, and promotes cross-fertilisation of good practice and ideas.
 - e. Market discipline will play a major role in ensuring their effective application. As the outputs are developed with industry input and are public, CEBS can expect the industry to be aware of any differences and to bring these to light. Supervisory disclosure of approaches and implementation will be a powerful tool ensuring a consistent application of CEBS' outputs.

3.4 Co-operation and information-sharing between banking supervisors

55. Enhanced co-operation and information-sharing will contribute to CEBS' objectives by helping to ensure that all elements of cross-border groups are fully supervised, and that information about potential risks is appropriately disseminated. It will also promote a more coordinated approach to supervision that avoids imposing unnecessary duplication and costs on the supervised entities and the supervisory community as a whole.
56. There are various tools that CEBS will use to achieve its goals in this area, such as:
- a. Defining *ex ante* guidelines for shaping supervisory co-operation and *ex post* review mechanisms to ensure consistency of approaches and identify possible improvements.
 - b. Facilitating a regular exchange of confidential information on issues where there may be multilateral interests.
 - c. Creating *ad hoc* information-sharing networks on issues of mutual interest.

- d. Developing effective operational network mechanisms to facilitate and promote co-operation and information-sharing between groups of supervisors in normal times and in times of stress.
57. It is likely that CEBS' efforts in the area of co-operation and information exchange will follow a natural sequence: (i) at first focusing on *ex ante* shaping of the supervisory co-operation framework(s), in particular in relation the provisions of the proposed CRD, then (ii) turning to the practical use of the framework(s) for specific cases, and (iii) later reviewing how this is working in practice. This iterative process will ensure that arrangements are being applied consistently, and facilitate any necessary amendments to the framework(s).
58. It is important that the progress achieved in setting up and developing operational network mechanisms is assessed by means of a regular review of arrangements in place for EU groups of similar size and range of activities (this may be of particular relevance in relation to the requirements for co-operation on group model validation under the proposed CRD).
59. Supervisors are aware of concerns in the industry that, for example under Pillar 2 of the proposed CRD, there might not only be differences in judgements between supervisors in different countries but also that supervisory authorities might apply different prudential measures in respect of the same risks. CEBS has made a good progress on the broad framework for supervisory review (as set out in CEBS' consultation papers on the subject). Further convergence of practice and consistency of cross-border application at this practical level may be best achieved through exchanges of information between supervisors.

3.5 Other possible tools

60. CEBS is aware of the current debate on possible additional tools for the Level 3 committees, particularly peer review and mediation mechanisms. Indeed, the Commission notes in its recent Green Paper that "*Peer group reviews, benchmarking and efficient mediation mechanisms within the level of the supervisory networks could help find agreement on implementation/enforcement problems and help raise standards and best practices*".
- a. Peer review: CEBS notes that its sister committee, CESR, has an established a Review Panel. The Panel undertakes peer reviews based on self assessments by the members using a general methodology for reviews that has been approved by CESR. CEIOPS too is looking at peer review as it has just received a mandate from the Commission to start its own thinking on Peer Review.
 - b. Mediation: CEBS would consider it inappropriate to take up the task of reviewing complaints from individual regulated institutions that consider themselves subject to a disadvantageous supervisory treatment. Such a responsibility would be inconsistent with CEBS' role, which lacks enforcement powers. Such complaints should be addressed at the national level. On the other hand CEBS notes that

CESR has recently established a task force and conducted a public call for evidence on the possible establishment of a mediation mechanism between supervisors. CESR's review will deal with specific issues relating to securities markets and in particular the Market Abuse Directive, but will also touch on more general elements which could be of interest from CEBS' perspective. The mediation tool would be used to promote cooperation and improve convergence at level 3, and to resolve conflicts of interpretations of Directives between home/host competent authorities. CESR's intention is to prepare a consultation beginning in August 2005. Given that CESR's review has just started, CEBS believes that it is not appropriate to start a parallel review process.

61. Overall, CEBS perceives that, at the current time, the focus of its work differs from CESR's in one important respect, i.e. the latter has focussed on regulatory enforcement mechanisms and advice in the legislative area. CEBS considers that its work is more about building a common supervisory culture and approach, mainly around the proposed CRD, and a practical, co-operative framework within an existing and firmly established legislative framework. This means that an automatic application of the tools used in other committees may not be optimal. As previously noted, CEBS does not currently perceive a pressing need to develop further tools to promote its objectives, but it remains open to discussing whether it is appropriate to go further.

Question: Although CEBS is currently aiming to assess the efficiency and effectiveness of its current set of tools, is there a pressing need to expand this to include those outlined above?

4. Evaluation and assessment of progress

62. The decisions leading up to the establishment of CEBS noted that the Committee would be assessed after four years. The assessment of the working of the Lamfalussy approach is likely to be driven by a variety of factors that are very difficult to predict and meet. While the Inter-Institutional Monitoring Group (IIMG) will clearly have the main task of assessing the Committee, different stakeholders may have different understandings of what can be reasonably expected from CEBS.
63. CEBS plans to have an annual review to reassess its work programme and – if necessary – to adapt its strategy and objectives. CEBS will develop a methodology to help it assess its own progress, identifying those areas in which it is on track, those for which progress has been slower or faster than expected. Besides the ability to deliver, it is important to also gauge the impact that CEBS' work is having, in the perception of the constituencies which should benefit from it (e.g. supervisory authorities, the banking industry – especially cross-border groups, but also smaller institutions – and end-users). CEBS will also seek to assess the ability of each product to meet its intended objectives.

64. The purpose of such assessment tools will be for CEBS to have in place clear mechanisms to help it identify its future priorities and reassess its work programme. Given the complexity of its operating environment, the number of outside bodies that have a right to request work, and others that might wish to use its services, and the very tight resources constraints that it operates under, CEBS must be able and willing to adapt its priorities and be flexible enough to respond to urgent requests for work.

Question: What (other) specific monitoring tools should CEBS adopt now to ensure that it can adapt to changing demands and priorities, and meet its objectives in the short and longer term, for example specific surveys conducted with the help of the Consultative Panel? Or should this be considered later, after the Lamfalussy review?

5. Conclusions

65. The Lamfalussy framework provides CEBS with a flexible and adaptable framework within which it can deliver its objectives. CEBS will aim to exploit, to the full, its current tools. Lamfalussy does not dictate a single solution to cover every eventuality, but rather provides for a range of possible approaches without prescribing the route to be taken.
66. It is early days and there are many challenges ahead. CEBS will need to take great care that it achieves a good balance in a complex environment where the interests of the players is often quite divergent, e.g. the different interests of large and small institutions, markets, jurisdictions, home-host, etc.. While CEBS believes it is making good progress in the areas of its competence, more needs to be done to make sure that all of the possibilities offered by the Lamfalussy approach are being fully exploited for credit institutions and investment firms.

Annex

CEBS' tools and examples of their use

A. Effective legislation

Providing advice to the Commission on EU legislation (Level 1 and 2), either

On its own initiative.

As noted above, while it is not CEBS' role to legislate or to enforce legislation in the EU, it is possible that, in the course of its activities, it will identify potential gaps and problems in the legislation that may interfere with its objectives. Clearly, CEBS will bring such matters to the attention of the European Commission, and will contribute to efforts to resolve them, where appropriate.

CEBS may also highlight matters that technically fall under the heading of "Level 2 issues" (see below), although the formal use of the level 2 technique implies a formal mandate from the Commission.

At the request of the Commission.

The Commission may also ask CEBS for input and advice on matters in relation to the directives.

In 2004, CEBS received two requests from the Commission for advice. In response to these, the Committee: (1) proposed the deletion of a number of national discretions in the proposed CRD in order to promote a more consistent approach to its application across the EU; and (2) proposed a set of adjustments ("prudential filters") to be made to the quantitative information reported by institutions for supervisory purposes, in order to ensure that the new International Financial Reporting Standards would not have a volatile effect on prudential ratios.

The Commission intends embark reviews of existing banking legislation. Where it signals its intent to propose new legislation, CEBS would expect to be involved and to offer an opinion. For example, CEBS has been asked for advice on work on mergers and acquisitions, the e-money directive, and the deposit guarantee directive, and expects to be heavily involved in planned work to review the definition of capital or "own funds" in the banking directives.

At level 2, in order to provide a more flexible and responsive approach to EU legislation that ensures certainty and consistency for the industry, the Lamfalussy approach envisages that the technical aspects of this legislation should be developed and

adopted through a special procedure, in which CEBS should play a key role. At the request of the European Commission, CEBS can be asked to propose these technical rules to “flesh out” the higher level legislation that is agreed via the usual EU legislative process. These proposed rules should be prepared in full consultation with the industry and with full accountability. Should the Commission accept CEBS’ proposals, they could be adopted as part of the common EU legislation via a special voting process involving representatives of the EU Member States (“comitology”). CEBS has not yet received any such requests from the Commission.

B. Consistency of approach

Developing guidelines in relation to (existing or forthcoming) EU legislation, in particular on supervisory review (“Pillar 2”) of the proposed CRD.

Developing effective guidelines (addressed to supervisory authorities or to institutions) that will promote a consistent implementation of the proposed CRD is proving to be the main area of CEBS’ work, and is likely to remain so over the forthcoming years, for the reasons noted above.

CEBS has already published some proposed guidelines, and has a number of others under preparation. These guidelines cover a number of different aspects of the proposed CRD, including the wide-ranging supervisory review process (“Pillar 2”), the obligations on institutions to have sound risk management internal governance and capital adequacy assessment processes, obligations on supervisors to have review and evaluation processes and risk assessment systems, the validation of models and the recognition of ECAIs.

The continued development and finalisation of these guidelines through consultation with the industry and the practical preparation for their proper implementation are likely to take up much of CEBS’ efforts over the forthcoming years.

In the field of accounting and auditing, CEBS will continue to conduct work aimed at supporting common application and understanding of some of the components of IFRS for supervisory purposes. This work will cover areas such as the use of the fair value option, loan accounting and provisioning. CEBS has already issued a number of comment letters in response to exposure drafts published by the International Accounting Standards Board (IASB)

Developing standards on areas not covered in EU legislation

CEBS is not restricted to working on issues that are covered by EU legislation. As an independent committee of supervisors, it has the possibility to promote consistency of approach in other areas of supervisory practice that fall within the competence of its member authorities

One example has been the proposed standards on outsourcing published in 2004. In the future, when the proposed CRD work is finalised, CEBS is likely to work more extensively in this area.

Proposing common reporting guidelines

While it is essential that supervisors receive appropriate information from institutions in order to carry out their tasks, different supervisory reporting requirements set by different supervisors across the EU do impose a cost on the industry, and there have been a number of calls to streamline requirements in this respect.

CEBS takes this issue very seriously, and will continue to push hard on two particular initiatives it has taken that have the aim of promoting greater efficiency and which will also facilitate information exchange between supervisors. These are the first initiatives of their kind in the EU, and take advantage of the opportunities for convergence arising from proposed CRD and IFRS:

(1) CEBS is currently evaluating the results of its consultation exercises on a common reporting framework for EU institutions to use under the proposed CRD to report their solvency ratios;

(2) CEBS will also publish a set of IFRS-compliant common formats for institutions to report balance sheets and profit and loss accounts.

CEBS will carefully evaluate the feedback on these two initiatives and continue its efforts to promote their effectiveness.

Designing a framework for supervisors to make public disclosures, for example on implementation of EU legislation

The proposed CRD sets out a requirement for EU supervisors to publish information about how they have implemented the directive ("supervisory disclosure"). This information includes:

(a) the texts of laws, regulations, administrative rules and general guidance adopted in their Member State in the field of prudential regulation;

(b) How the options and discretions granted by the directives have been used in each Member State;

(c) The general criteria and methodologies that supervisors use to conduct a "supervisory review" of the institutions under the CRD;

(d) Aggregate statistical data on key aspects of the implementation of the prudential framework in each Member State.

This information should be published in a common format and place in order to facilitate comparisons between countries.

CEBS [has published] a consultation paper setting out how it intends to meet these obligations (which will be made via CEBS' website and the websites of its member authorities).

Supervisory disclosure can be an effective tool in promoting greater consistency of supervisory approach.

For example, even in the absence of measures to promote consistency, publication in an easily comparable format of the different approaches to a particular issue will facilitate transparency and exert a pressure for convergence.

Also, disclosure can be used to promote transparency about the implementation and application of CEBS' guidelines and standards.

The proposed CRD framework is the first step towards greater transparency from the supervisors. This is also an evolutionary process that would allow gradual adaptation to the forthcoming changes of needs and practices of both supervisors and institutions.

Initiatives on training and exchange of staff

CEBS will explore possibilities to promote and facilitate the development of common training programmes and the exchange of staff across the EU supervisory authorities.

The proposed CRD in particular provides an obvious opportunity for the supervisory authorities to pool training resources. This will be cost efficient and at the same time promote a more common culture and approach to supervision.

Staff exchanges can also have a positive impact on the consistency of supervision, as well as helping the authorities to meet specific needs and promoting cross-fertilisation of ideas. This clearly has to be sufficiently broad to have an appropriate effect.

C. Co-operation and information sharing

Defining *ex ante* guidelines for shaping supervisory co-operation and *ex post* mechanisms to ensure consistency of approaches and identify possible improvements.

One example would be the detailed guidelines developed by CEBS to promote a common approach to co-operation and information exchange between home and host supervisors of European banking groups. These guidelines build on the proposed CRD but, like the CRD itself, have much wider implications than the name suggests, covering co-operation in a broad range of supervisory areas.

CEBS is also working with the ESCB Banking Supervision Committee on specific initiatives to enhance co-ordination and

information-sharing arrangements between banking supervisors and central banks in crisis situations.

Facilitating a regular exchange of confidential information on issues where there may be multilateral interests.

Information exchange between banking supervisors has been conducted for many years on a bilateral and multilateral basis. CEBS has reinforced this, by providing a platform for voluntary multilateral information exchange between the supervisory authorities of the EU. CEBS will consider further how to develop this framework, if necessary, in an increasingly integrated market.

Creating ad hoc information-sharing networks on issues of mutual interest.

CEBS has created a number of networks of experts from the supervisory authorities to facilitate contacts and exchange of information on specific issues of mutual interest, such as passporting and enforcement.

Facilitating concrete operational networking mechanisms between subsets of authorities involved in the supervision of specific banking groups, such as those that will be required under the future capital requirements regime.

Such mechanisms are not directly sponsored by CEBS. In fact, under the proposed CRD, it will be compulsory for the various authorities involved in the supervision of cross-border EU banking groups to collaborate in making decisions about whether to allow internal methods/models that are designed at the group-level to be used across the group as a whole. However, CEBS could and should assist in promoting consistency of the approaches taken within and among the mechanisms. CEBS' home-host guidelines mentioned above include a specific section on co-operation in this respect, in order to promote consistency of approach.