

**CEBS draft guidelines on
joint assessment and joint
decision regarding the
capital adequacy of cross
border groups (CP39)**

July 2010

General comments

The Italian Banking Association (ABI) would like to take the opportunity to comment on the Consultative Paper 39 (CP39) containing the draft guidelines on joint assessment and joint decision regarding the capital adequacy of cross border groups, issued in accordance with art. 129 CRD, as amended by directive 2009/111/CE.

ABI holds that the guidelines' proposed scope of application (the adequacy of own funds at consolidated as well as at solo level, and the required level of own funds above the regulatory minimum applied to each entity within the group and on a consolidated basis) is appropriate. ABI particularly supports the idea that in the case of cross-border groups joint assessments on the elements covered by the SREP and joint decisions on the capital adequacy should cover both, the consolidated and the solo levels. ABI also welcomes the encouragement of joint-decisions on a voluntary basis on the application of other prudential measures under article 136(1).

ABI welcomes the leading role envisaged for the consolidating supervisor (CS). However, it seems necessary to clearly (i) spell out the decision-making process and (ii) define the CS as the leader of the College of Supervisor (CoS). Moreover, the proposed guidelines should be also forward-looking and stress the future role of the European Banking Authority (EBA) and of the parent company as single entry point of the CoS' decisions and inputs.

With regard to the guidelines' declared aims, ABI welcomes them as a way to render more effective supervisory cooperation in the case of EU banking groups. However, it should be explicitly stated that these guidelines merely constitute another step towards the ultimate objective of having a common approach and a clear decision-making process among EU supervisors as regards the capital adequacy of groups. This would entail common templates, common methodologies and straightforward dispute settlement mechanisms in case of disagreements between national authorities. Besides, it is crucial to repeal the national discretions allowed by the Directives in force and to eliminate any difference in the national accounting regimes.

With regard to the solo level, ABI retains that the CoS, under the guidance of and on the basis of a proposal by the CS, has to decide how and to what extent intra-group positions should be dealt with, from a capital requirement point of view. In particular, CoS should be able to verify under what conditions a consolidated approach (i.e., an approach under which all intra-group positions are eliminated) could be applicable.

Specific Comments

1. Chapter 2

As regards the proposed creation of a common template in order to present the national assessment of the entities' risk factors and risk management, ABI maintains that such template should also serve as a tool for identifying the divergent applications of EU prudential provisions, including CEBS guidelines and standards. This proposal could be enhanced once a single European rulebook will be devised and the EBA will be established, provided that it will be able to deal effectively with such divergences.

ABI retains that the individual risk assessment of the entities of the group should be consistent at group level: this implies that supervisors in EU have to agree on common definitions before putting in place a common template to present a summary of the risk assessment of the cross-border group. The joint assessment process could possibly benefit from highlighting the weight of each specific risk in the risk profile of individual legal entities, as well as from the introduction of quantitative thresholds and qualitative criteria.

Risks' list should be decided according to a proposal put forth by the CS (based on the group's self-assessment), within a timeframe suitable for the capital adequacy evaluation.

Finally, ABI deems necessary to duly consider during the joint assessment process the position of extra-EU entities of the group and the relations with their supervisors.

2. Chapter 3

In ABI's view, common reporting should be exploited both within the CoS and in the supervision of the individual entities under the jurisdiction of the consolidating and host supervisors. To this aim, supervisory dialogue and the joint assessment of the ICAAP framework at group and solo levels should be spelt out in a more detailed fashion, providing for a stronger coordination role of the CS and a mediation role for CEBS, pending the establishment of the EBA with its foreseen dispute settlement powers.

Furthermore, ICAAP assessment methodologies should reckon with the allocation of benefits arising from the consolidated diversification, while the SREP should duly consider the parent company's role as a coordinator.

3. Chapter 4

In ABI's opinion, the effectiveness of the proposed common template, aimed at easing the dissemination of supervisory reporting amongst the CoS members, will depend on the adoption by the CEBS/EBA of a common language.

Bearing in mind that, according to art. 74 CRD, CEBS has been granted the power to adopt a common language by the end of 2011, ABI believes that CEBS should start, within a proper timeframe, a homogenisation process of the supervisors' language and analysis' methodologies.

The advantage of adopting a common language and common analysis' methodologies will be to allow the CS to promptly reach a joint validation with the host supervisors, with a view to facilitate the delegation of tasks.

ABI would like to recall that the adoption of harmonised supervisory practices and validation criteria is key to avoid any kind of competitive distortion.

4. Chapter 5

In order to make the supervisory cooperation easier and, in particular, to help supervisors' cooperation in (i) the coordination of the remedial actions to be eventually adopted and (ii) the correct evaluation of the diversification effects related to a group's entities, ABI proposes to appropriately balance Pillar 1 and Pillar 2 capital requirements.

Useful experiences in that field can be found in the current Italian regulations for the prudential supervision of banks, where Banca d'Italia requires cross-border groups to show how total capital reconciles with the definition of supervisory capital, in order to understand how capital instruments that may not be included in supervisory capital are used in covering total internal capital.