
8 November 2005

**Comments on
CEBS Consultation Paper CP09
"Guidelines for co-operation between consolidating supervisors and
host supervisors"**

Bundesverband der Deutschen Volksbanken und Raiffeisenbanken e. V. (BVR), Bundesverband Öffentlicher Banken Deutschlands e. V. (VÖB) as well as Deutscher Sparkassen- und Giroverband e. V. (DSGV)¹ appreciate the present opportunity of commenting on the Consultation Paper CP09 of the Committee of European Banking Supervisors (CEBS). We generally approve of the proposed models for co-operation which clearly delineate the competences of the supervisors, thus avoiding the placement of unnecessary burdens on the banking industry and preventing redundant work as well as conflicts between the supervisors. The phased models provide an adequate basis, which must however prove themselves in practical use.

We would like to answer the individual questions raised by CEBS in the consultative paper as follows:

Introductory statements

The European Financial Market

Are there any changes not mentioned here that you deem significantly impacting on the European financial sector and, in particular, on the supervision of cross-border banking groups?

In its introductory remarks, CEBS notes that larger groups in particular are centralising key and/or core functions, while the local subsidiaries are used for purposes of market entry. We basically agree with this assessment of the situation, but it does not reflect the full extent of the changes in the (European) financial market. In the case of banking groups that operate across borders, in addition to the trend towards centralisation, there is also an increased tendency to outsource certain business

¹ In terms of their balance sheet total, with 1,858 out of a total of 2,399 banks as well as 28,739 out of a total of 35,760 branches, in the year 2004, BVR, VÖB and DSGV accounted collectively for 53% of the German banking market. Through their representations and subsidiaries, the institutes of the three associations are represented on all major banking locations both in Europe across the world.

segments or individual functions, e.g. in conjunction with the implementation of AIRB models or validation, as noted by the Joint Forum, IOSCO and CEBS as well in the consultative paper CPO2.

What are your views on the need for a co-operative framework among supervisors that is at the same time comprehensive and flexible?

In principle, a framework for comprehensive and flexible co-operation of the supervisors in the European financial market, particularly in view of the new Capital Requirements Directive (CRD), is certainly in the interest of the institutions and is to be welcomed as a way of preventing "double supervision" and the ensuing administrative overkill, as mentioned at the beginning. One of the essential elements of such a framework must therefore be the mandatory avoidance of additional administrative burdens and additional costs for the institutions being supervised. The desire of the supervisors for co-operation and for avoidance of administrative burdens will be manifested, for example, in the current debate on a Common Reporting Framework (COREP).

Furthermore, the framework proposed here does not cover all of the existing problems associated with international activity. The problem of co-operation of the supervisors from the respective EU member states with supervisory authorities from countries outside the EU will prove to be more difficult in practice than the co-operation among the European supervisors with regard to issues involving the varying supervisory competencies of the consolidating supervisors and the host supervisors, which is only natural against the background of a European directive. In view of the presently fragmentary regulations of the Basel Committee on Banking Supervision, we would like to note at this point that similar frameworks and models must also be developed for the aforementioned relationships with supervisory authorities from non-EU countries.

Supervisory considerations with regard to these changes

What are your views on the description of the respective interests and roles of consolidating and local supervisors within the proposed framework?

What are your views on the concept that supervisory co-operation should go beyond the mere exchange of information in order to enhance effectiveness?

What are your views on the suggestion that supervisors should, with a view to efficiency, consider the possibility of performing tasks on behalf of one another in strict respect of each other's legal powers and responsibilities?

In our view, the frameworks provide detailed descriptions of the competences of the consolidating supervisors and the host supervisors. This degree of detail will certainly help to prevent discrepancies from the very beginning. Still, more work is needed on issues involving the decision-making and in particular the (de-)escalation processes among the consolidating supervisor and the host supervisor.

Furthermore, the provision in Section 18, which stipulates that supervisory co-operation must go beyond the mere exchange of information, must be specified more precisely. The legal framework established in Directive 2000/12/EC applies to the relationship of the consolidating supervisor and the host supervisor. As the mere exchange of information has already been comprehensively regulated in Article 132 of Directive 2000/12/EC, forms of supervisory co-operation which go beyond this surely require a legal framework. It is questionable whether Article 131, Paragraph 2 of Directive 2000/12/EC is a sufficient legal basis for such specifications, based on which the consolidating supervisor and the host supervisor conclude co-ordination and co-operation agreements and, within this framework, additional duties can be assigned to the consolidating supervisor. The supervisors must not be permitted to extend their competences on their own authority without democratic legitimation.

The aforementioned comments apply equally to the considerations of CEBS with regard to permitting one supervisory authority to act on behalf of or in the name of the others. Apart from the question of the legal basis, against the background of the discussions regarding the competences of the consolidating supervisors as specified in Article 129 of Directive 2000/12/EC, it is very questionable whether such action - and the creeping loss of sovereignty accompanying it - is truly desirable as a matter of policy. In any case, this requires national statutory sources that should be "specified" by a corresponding clause in the Brussels directives. Regardless of this, we welcome statements from CEBS that only a full delegation of all supervisory competences will be considered. This way problems of delineation in individual areas of competence can be effectively prevented.

Do you see major risks for duplication of tasks under the proposed framework? If yes, which are these?

Do you wish to make any comments or suggestions with regard to the considerations set out in this chapter?

As already described, the framework for co-operation attempts to specify the competences of the consolidating supervisor and the host supervisor in as much detail as possible. For the reasons described above, we consider this necessary. It is still necessary to review whether the stipulated competence distribution could be made even more specific in several places. In our view, inexact definitions of competences or other uncertainties and differences arising from these in the practical application of the framework pose the risk of creating redundant tasks and/or activities and thus could impose additional burdens on the institutions being supervised.

Framework

What are your views on significance of each entity within a group and/or within its domestic market as key elements, with a view on proportionality, for structuring the process?

What are your views on the proposed approach to assess significance? Do you want to make any suggestions as to improve this approach?

In our opinion, the proposed focuses of the evaluation of companies of a group with regard to a decision on the extent of co-operation and information exchange by the supervisors, namely their significance for the respective regional markets on the one hand and for the group as a whole on the other hand, are fundamentally suitable criteria. However, additional specifications should be included in the paper for the case in which the evaluation of the importance of the company for the respective regional market represents an irreconcilable contradiction with regard to the importance of the group as a whole. We suggest that the opinion of the host supervisor be given greater weight in such cases.

Beyond that, we consider the definition of the material content of the term "significance" to be understandable and sufficient.

Model of co-operation

Practical framework (group and subsidiary)

What are your views on the general description of the process as set out in the tables above? Does it depict a logical, workable and comprehensive approach?

Do you see additional potential for streamlining the process of co-operation, under the present legal provisions? What suggestions do you wish to make in this respect?

In principle we consider the process description to be logical, functional and comprehensive.

In contrast to the cases of processing and reaching a decision on permission to use internal rating systems (IRB) or advanced measuring methods for operational risks (AMA) according to Article 129 of Directive 2000/12/EC, the proposed "group and subsidiary" framework does not include any temporal requirements for the duration of the process of completing the individual stages. Further streamlining of the process by specifying a time frame should be considered.

Furthermore, in the case of structural changes in the group, the entire six-step process should not have to be repeated, and this should be specified in the consultative paper accordingly. Rather, it should be sufficient to build on already existing evaluations. Otherwise the institutions involved would be subject to inappropriate burdens imposed by the phase concept, such as the provision of information. Such an application of the framework could no longer be considered flexible.

Practical framework (group and branches)

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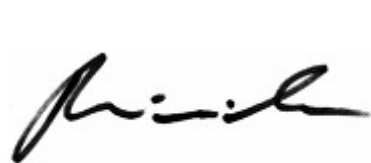
Essentially, the process described represents a logical, functional and comprehensive practical framework. However, the issue of decision-making and (de-)escalation mechanisms arises insofar as differing opinions exist between the consolidating supervisor and the host supervisor. Analogous to the comments on the "group and subsidiary" framework, we believe that the specification of a time frame in which the phases should be completed would be a good idea.

In our opinion, it is particularly important that the supervised institutions are given clear information about the allocation of the tasks and competences between the consolidated supervisor and the host supervisor. In particular, the transparency noted in Sections 33 and 37 iv. which applies to all frameworks in the form of communication of information of the senior management of the group should also apply to general communication and discussion, especially to prevent or to clarify misunderstandings. In this respect, we believe that the proposed joint inspections should be described in more detail. We assume that a so-called joint inspection will not lead to interventions in the existing sovereign areas, but will serve only to improve the communication of information on the part of the home and host supervisors.

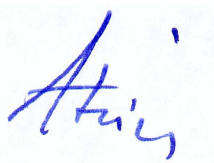
Practical framework (model approval)

Do you see any serious obstacles to the smooth process of model approval stemming from the proposed tasks executed by the consolidating supervisor and the host supervisor? If yes, what are they and how to remove them?

As previously mentioned elsewhere, the framework - understandably - can regulate only the relationship between the supervisors in the European Union. However, the relationship between supervisors from the European Union and non-EU countries will be decisive. Thus we consider the specifications proposed thus far by the Basel Committee on Banking Supervision to be insufficient. Rather, as we would like to point out once more, the respective supervisors concerned should conclude bilateral or multilateral agreements as quickly as possible in order to eliminate obstacles and burdens.



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