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EUROFINAS COMMENTS ON THE CEBS GUIDELINES FOR CO-OPERATION BETWEEN CONSOLIDATING SUPERVISORS AND HOST SUPERVISORS (CP09)

Eurofinas, the European Federation of Finance House Associations, representing the European consumer credit industry, welcomes the opportunity to react to the CEBS consultation CP09 ("Home/host Paper") and would like to express it thanks to CEBS for holding an Open Hearing on the paper in London on the 5th of October 2005.

If you have any questions on the points made in this paper, please do not hesitate to contact Jacqueline Mills directly on +32 2 778 05 71 or at j.mills@eurofinas.org.

We thank you for taking the time to examine our comments.

Yours faithfully,

Mr Pierantonio RUMIGNANI
VICE-PRESIDENT OF EUROFINAS AND CHAIRMAN OF THE EUROFINAS ECONOMIC AFFAIRS COMMITTEE

Mr Marc BAERT
EUROFINAS DIRECTOR GENERAL

General Considerations

1. The membership of Eurofinas ranges from the consumer credit departments or subsidiaries of large European banking groups to independent specialised banks or captive companies. While our membership is diverse, it has been our opinion from the beginning of the process that consisted of transposing Basel II rules into EU law that the resulting Capital Requirements Directive should be applied on a consolidated level. This is due to the fact that financial groups are increasingly managed in an integrated and centralised manner on the basis of business lines and central functions. However, regulators considered that complete consolidated supervision in Europe was not possible due to fragmented legal frameworks. Thus, in order to alleviate the major drawbacks of Article 68 of the CRD, our Federation would have liked to have seen the notion of a consolidating supervisor as set out in Article 129 of the CRD be applied in the same fashion to the Supervisory Review and Evaluation Process and more generally to Pillars II and III.

2. Similar opinions, advocating consolidated supervision, prevail. For instance, in the conclusions of the Third European Financial Services Roundtable (EFR)[1] it is stated that:

   > *"For internationally active groups, supervisory responsibilities no longer coincide with, nor are they suited to the reality of those groups. The institutional set-up of financial supervision in Europe currently is a patchwork of different and largely incompatible regimes, where responsibilities, procedures and incentive structures are unclear."*

   The EFR therefore backs the "lead supervisor concept"[2] in which the supervisor of the parent company is fully empowered to conduct the entire prudential supervision over all

[1]"On the Lead Supervisor Model and the Future of Financial Supervision in the EU", Follow-up Recommendations of the EFR, June 2005
[2] In §22 of the above mentioned report

operations of a financial institution within the EU. Furthermore, while some have expressed concerns that the lead supervisor system in unsuited to smaller institutions, the report points out that small, locally based institutions will not be affected by the consolidated supervisor concept as their supervisor will not change in practice[3]. Moreover, for those smaller institutions *who are active on a cross-border basis*, the benefit from consolidated supervision may prove to be even greater than for larger groups. This is because the smaller institution would be freed up from a proportionally larger amount of fixed costs created by the supervisory burden than a larger institution.

3. Therefore, given our position and in combination with the above mentioned considerations, Eurofinas welcomes the CP09 guidelines in the context of helping to pave the way towards consolidated supervision for EU institutions. However, in our opinion, the guidelines do not sufficiently make clear that they are only a *starting point* to achieving consolidated supervision and we would request that CEBS point this out.

4. In general, we strongly support the attempt made to reduce the administrative and supervisory burden for institutions. However, the success of these guidelines in terms of reducing burdens for cross-border institutions in the near future ultimately depends on supervisors complying effectively. To the greatest extent possible, all supervisors should apply the guidelines in the same fashion, leaving as little room as possible for national discretions or difference in application that may lead to an unjustified, unlevel playing field. It is our opinion that, only once *extensive and sufficient convergence* in supervisory practices as well as *consolidated supervision* are reached, will the playing field be entirely even for all European institutions. We would therefore like to see clear commitment from CEBS members in this direction.

5. Furthermore, Eurofinas welcomes clarification in the CP09 on how potential conflicts of differences of opinion on cooperation and its mechanisms will be resolved.

[3] §38 of the EFR report

Factors Impacting the Supervision of European Cross-border Banking Groups

6. Eurofinas is of the opinion that there are two points affecting the future of European financial services and the supervision of banking groups not mentioned in the CP09 paper.

   Firstly, the intention to move towards the creation of true consolidated supervision when it is possible to do so is reflected in the recently passed text of the CRD. Indeed, Recital 11 (a) of the CRD states that member states can apply the Directive on a strictly consolidated basis if they deem this to be appropriate and underlines the power the Directive has to support cross border institutions by facilitating co-operation between various competent authorities. Therefore, we feel that explicit reference should be made to this recital as it highlights the direction that European banking supervision should take in the near future and would thus welcome that CEBS express in its CP09 paper a view of the future of European banking supervision along these lines.

   Additionally, reference should be made to the EU Commission's Green Paper on Financial Services Policy in which the Commision's objective for the next five years is:

   > *"To maintain the highest, most up-to-date standards of regulation, oversight and supervision for EU financial institutions, systems and markets to ensure financial stability, market integrity and consumer protection. Supervisory requirements should accurately reflect the risks run in the market while converged supervisory practices and powers are crucial to ensure a level playing field and to avoid regulatory arbitrage."*[4]

[4] Green Paper on Financial Services Policy, Annex I, Section III, "Effective and Efficient Supervision"

The Final Objective Should be Consolidated Supervision

7. The above comments made in points 1 to 6 lead us to call on CEBS that the CP09 paper should clearly state that CEBS' commitment is to reach as high a degree of supervisory convergence as possible within the current legal framework with the *final objective* of attaining consolidated supervision undertaken by the lead or home supervisor as soon as is materially possible.

Going Beyond Information Exchange

8. While timely and efficient information exchange is a *conditio sine qua non* to supervisory cooperation, it is only a starting point to achieving a more adequate European system of supervision and our Federation would like to see further steps taken in the immediate future. In our view, the most should be made of the CRD provision for supervisors to delegate responsibilities and/or tasks to each other.

9. Moreover, Eurofinas hopes that cooperation amongst home and host supervisors will include the recognition of different authorities' approaches. For instance, if a group applies for a IRB/AMA Advanced Approach, local supervisors should not be allowed to impose on subsidiaries a different model corresponding to national practices. This would lead to the unduly onerous consequence of operating one model/system on a national level and another model for group/consolidated purposes. As a result, we would request that the CP09 mention that home supervisors should as far as possible accept the approach of the lead supervisor.

Delegation of Responsibilities and Tasks

10. If found that it contributes to alleviating the burden for supervisors and/or institutions, the possibility provided for in the CRD to delegate *responsibilities* through written, multilateral agreements should be used to the greatest extent possible.

11. Following on from above, we welcome as much delegation or coordination of *tasks* as is possible in an effort to lessening the burden for supervisors and institutions alike. Indeed, the supervisor who is best placed to perform certain tasks because of easier access to information (knowledge of local market specificities for instance) should be in charge of the task. Once the task has been carried out, the results should then be communicated to the other supervisors involved.

12. Nevertheless, it is the Federation's view that so long as the CP09 guidelines are voluntary for supervisors and convergence of supervisory practice is on a best-efforts basis only, the risk for task duplication remains. We would therefore encourage CEBS' members to abide by these guidelines as far as possible and to avoid any exceptions.

The Approach for Assessing Significance

13. Our members agree that the assessment for determining significance, either within a group or within a local market should be principles-based. Therefore, it should be made explicitly clear that the list of criteria currently provided are only examples of how significance can be determined.

14. The broad outlines of a procedure for dealing with disagreement among home and host supervisors as to whether or not an institution is deemed to be significant or not should be sketched out. For the moment, there is no information on this point and we would not like to see potential disaccord among supervisors having a negative impact on institutions. For instance, the consolidating supervisor could cast the deciding vote if no agreement is reached within a fixed period of time.

15. Furthermore, institutions or groups should be involved in discussions on significance and the decision process along with the supervisory authorities. We would welcome that such a principle of transparency be integrated into the CP09.