



Committee of European Banking Supervisors

Date 30 July 2004  
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## BY EMAIL

Dear Sirs

### **Eversheds LLP response to CEBS Consultation Paper - The High Level Principles on Outsourcing**

Eversheds is a European Law firm representing many clients including European banks and other authorised institutions. Engagements we undertake on behalf of our banking clients regularly include outsourcing arrangements.

Eversheds welcomes the opportunity to offer a contribution in response to the Consultation Paper (CP02) on the principles institutions and supervisory authorities are required to and should observe in relation to outsourcing.

We wish to make clear that the submission Eversheds makes reflects Eversheds own suggestions, based on its experience in this area, and should not be taken as an indication of the views of any client of Eversheds.

We are aware that other submissions are being made to CEBS on the generality of CP02. Our submission therefore focuses on an area we believe to be of particular value in this process.

### **Response**

While we recognise and welcome CEBS' possible intention to develop guidance on the high level principles (HLPs) set out in CP02 in the areas of strategic or core activities and the concept of a materiality test, we note that, among CEBS main tasks, is the promotion of supervisory co-operation.

In our respectful submission, the opportunity presented by CP02 to introduce an HLP that moves to enhance the harmonisation of guidance issued by supervisory authorities deserves consideration.

CEBS will be aware that authorised entities frequently make use of operational centres for activities carried out in a number of European states. In such a situation an outsourcing institution, or indeed an outsourcing service provider, may face making notification to a number of supervisory authorities.





In many cases such outsourcings are planned with reference to functional areas. Accordingly, it gives greater transparency of the approach of the supervisory authority, if guidance is available that can be referenced to functional areas and activities within functional areas. An authorised entity evaluating such an outsourcing incurs significant costs before a formal notification is made. The possibility of such costs being wasted, on account of a supervisory authority declining the notification, is lessened where guidance of the kind previously mentioned has been made available.

We believe that, in the interests of promoting common standards in Europe, supervisory authorities could accept an obligation to take account of guidance issued by other supervisory authorities in Europe. In general terms we submit that issuing harmonised guidance of this kind will enhance co-operation between supervisory authorities, achieve greater transparency and help to avoid wasted cost.

The substance of our response is to request CEBS consider the inclusion of a further high level principle, as a new HLP XII to address the issues referred to here. For illustration, we have included a suggested form of wording for such a principle in our submission, attached.

### **Contacting Eversheds**

Please do not hesitate to contact us if you wish to discuss our response further. In the first instance please contact John Mawhood (+44 207 919 0662).

Yours sincerely,

**John Mawhood**  
**Partner**  
**For Eversheds LLP**

**Submission of Eversheds LLP  
In response to CEBS Consultation Paper 02**

**Proposed HLP XII**

**Supervisory authorities should provide guidance with reference to functional areas in respect of which they will, in principle, consider outsourcing by authorised entities. Each supervisory authority's guidance should take into account guidance issued by other supervisory authorities.**

*The obligation on supervisory authorities, in issuing guidance, to take account of guidance from other supervisory authorities is aligned to the objective of promoting co-operation between authorities, as well as the consistent implementation of EU Directives.*

*It is recognised that, for institutions considering the potential for outsourcing of a certain function (or a range of activities within a function), potentially involving some activities that may be regarded by a supervisory authority as strategic or core activities, considerable preliminary costs can be involved prior to any formal notification being made to the relevant supervisory authority.*

*To assist in achieving a co-ordinated and transparent approach among supervisory authorities, where a supervisory authority is satisfied that lessons of general application have been learnt from experience in a particular outsourcing situation, it should consider issuing further guidance reflecting that experience for the benefit of other supervisory authorities and outsourcing institutions.*