



Committee  
*of* European  
Banking  
Supervisors

# Annual Report 2008



## **ANNUAL REPORT 2008 OF THE COMMITTEE OF EUROPEAN BANKING SUPERVISORS**

This Annual Report has been submitted to the European Commission, the Council, and the European Parliament, in accordance with Article 13 of the Commission Decision C(2009)177 of 23 January 2009 establishing the Committee of European Banking Supervisors and Article 6.1 of the Charter of the Committee of European Banking Supervisors.

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Kerstin af Jochnick  
Chair 2008-2009

## Foreword by the Chair

### Dear reader,

It is with great pleasure that I present the Annual Report for 2008 of the Committee of European Banking Supervisors, CEBS.

2008 was a very special year. It is rather tempting for me to borrow a phrase and to speak of an *Annus Horribilis* for the financial sector. The financial crisis spread further and deepened. Many EU banks had difficulties and several had to be rescued by the public sector. The problems in the market put a lot of pressure on EU banking supervisors, not only in their national jurisdictions but especially on their cross-border co-operation.

The expectations on CEBS have significantly increased during the crisis. During last year I have, together with the Secretariat, participated in a mounting number of meetings with the EU institutions. At the same time, we were expected to cope with very short tight timelines for most of the written responses CEBS was asked to submit. It has become very clear that for the future we need to significantly strengthen the present organisation in order to be able to meet the increased demands.

The annual report gives you a flavour of the main issues we were dealing with during 2008. We continued our very focused work on greater convergence of supervisory practices but at the same time also contributed through responses to many initiatives coming from both global and EU institutions.

Undoubtedly, we were able to take a step forward on the organisation of the supervision of major cross-border banking groups. Together with CEIOPS, our sister Committee, we established high level principles to be used by supervisors of cross-border institutions, banks and insurance firms alike. We also intensified our efforts to make sure that during 2009 supervisory colleges will be set up and running for all major cross-border banks in Europe.

CEBS delivered advice to the Commission on several important issues with the aim of improving present legislation but also achieving more regulatory harmonisation. One major piece of work concerned proposals for the elimination of more than 80% of the options and national discretions included in the original CRD of 2006. CEBS also provided advice on a harmonised definition of hybrid instruments that are eligible as Tier 1 capital and on improved regulation of large exposures. Another important area for both improved legislation and supervisory practices is liquidity risk management. Here again we have provided the Commission with advice on legislation and at the same time issued principles for good supervisory practice.

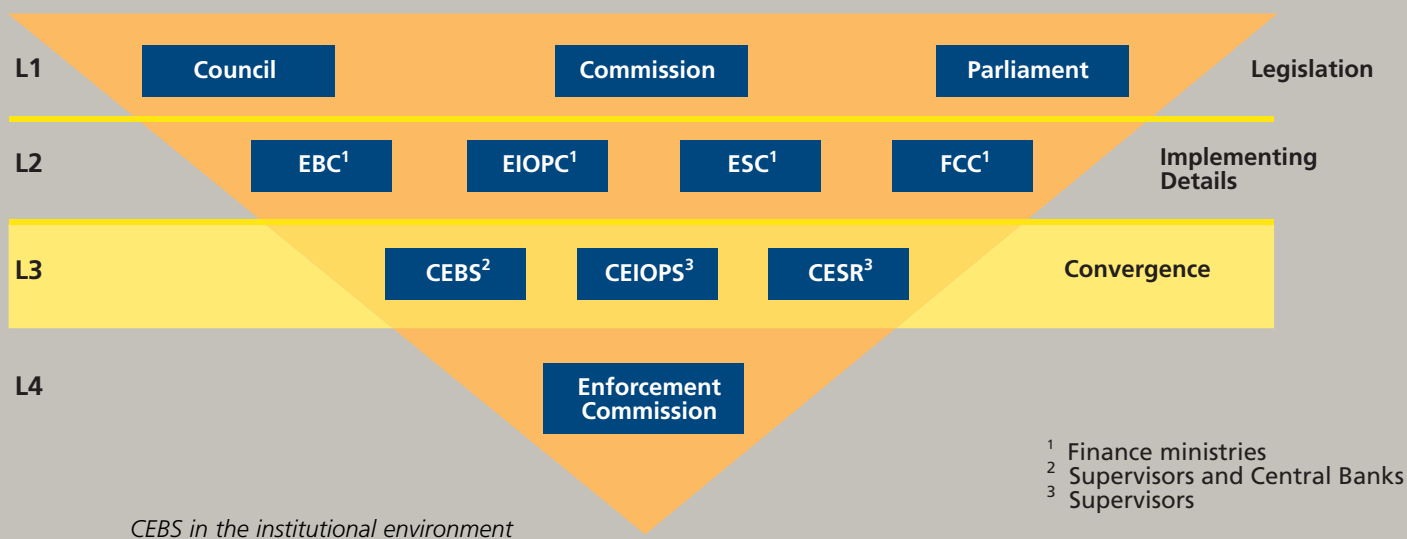
Responses to the financial crisis have in many cases had cross-sectoral dimensions. Many issues have been linked to overarching questions of accounting and valuation. In order to make sure that supervisors are responding in a coordinated way it was necessary to step up the co-operation between the three level three Committees (3L3). We have signed a new protocol and the co-operation has been given a more solid foundation in the sense that the Chairs are now given rotating responsibility for coordinating the 3L3 joint work, supported by their respective Secretariats. This improved organisation should provide a good foundation for any new cross-sector structure for co-operation among supervisors. In this context we submitted to the European Commission a joint response on the de Larosière report and on the European Commission's consultation on the improvement of supervision of the financial sector.

Even if the focus for CEBS is Europe we have a close eye on what is going on in the wider world. The financial crisis is global in nature and requires global responses. Several of our work streams are continuing in parallel with the corresponding groups at the Basel Committee on Banking Supervision.

Secretary General Andrea Enria, who had been with CEBS from its inception, returned to his home authority during 2008 and Arnoud Vossen was appointed to be the new Secretary General. The CEBS Secretariat is the hub of all CEBS's activities going on in Expert Groups and Task Forces. Additionally, in 2008, we set up several ad hoc groups dealing with specific tasks we were mandated. The Secretariat has, together with hardworking representatives from member authorities, delivered outstanding results in those groups and task forces. It is thanks to all these highly professional people that we can fulfil our commitments.

CEBS has now completed its first five years. Looking forward, I can assure you that we will continue the evolutionary approach with its two prongs of better regulatory harmonisation and more convergence of supervisory practices. Gradually, we will also give substance to the concept of a common European supervisory culture. At the same time, we stand ready to contribute to a refined and more robust architecture in the light of the present discussion of repairs to both the regulatory and supervisory frameworks.

In summary, CEBS has achieved much in 2008, but there is a lot more to do.



## 2. CEBS's organisation

As part of the so-called Lamfalussy process, the European Commission established by adopting Decision 2004/5/EC of 5 November 2003, the Committee of European Banking Supervisors (CEBS). This Decision has been updated by the Commission in January 2009<sup>1</sup>. CEBS took up its duties on 1 January 2004, serving as an independent body for reflection, debate and advice to the Commission in the field of banking regulation and supervision.

In January 2008, Mrs. Kerstin af Jochnick, Director of Prudential Supervision at the Swedish Financial Supervisory Authority (Finansinspektionen) was elected Chair of CEBS for two years. Mrs Kerstin af Jochnick has served as a CEBS Bureau member and also as Chair of the Expert Group on Capital Requirements (EGCR).

Mr. Giovanni Carosio, Deputy Director General at the Bank of Italy (Banca d'Italia), has taken over as Vice Chair of CEBS. Mr. Carosio has held several senior positions in banking supervision and he is currently representing the Bank of Italy on several international committees and working groups.

In the first months of 2009, CEBS has appointed two new Bureau members to the CEBS Bureau; Mr. Thomas Schmitz-Lippert (Bundesanstalt für Finanzdienstleistungsaufsicht - BaFin) and Mr. Fernando Vargas (Banco de España), who replace Mr. Jukka Vesala (Finnish FSA) and Mr. Rudi Bonte (Belgian Banking, Finance and Insurance Commission - CBFA).

The role of the Bureau is to discuss matters of strategic importance and prepare agenda issues for the CEBS's meetings. It also provides advice and assists the Chair and the Committee on budgetary and administrative matters.

CEBS, that started operating at the beginning of 2004 is supported, operationally and administratively, by a London-based Secretariat. The Secretariat is organised as 'CEBS Secretariat Limited', a company limited by guarantee under English law. The Secretariat's main tasks include preparation and maintenance of minutes of meetings, working documents and consultation papers, coordinating the work streams initiated in CEBS's substructures and supporting the CEBS's Chair in his/her public relations, activities and representational functions. The Secretariat also co-ordinates co-operation with the Commission and with the other Level-3 Committees.

Mr. Arnoud Vossen, from De Nederlandsche Bank, joined the CEBS Secretariat as Deputy Secretary General in January 2008 and in August 2008 he was appointed as Secretary General, replacing Mr. Andrea Enria, who had held the position since the establishment of the Committee in 2004. In October 2008, Mr. Patrick Amis (French Commission Bancaire) was appointed as Deputy Secretary General of CEBS.

<sup>1</sup> Commission Decision C(2009)177 establishing the Committee of European Banking Supervisors: [http://ec.europa.eu/internal\\_market/finances/docs/committees/c-2009-177\\_en.pdf](http://ec.europa.eu/internal_market/finances/docs/committees/c-2009-177_en.pdf)



Kerstin af Jochnick  
Chair – Finansinspektionen  
(Sweden)



Giovanni Carosio  
Vice Chair - Banca d'Italia  
(Italy)



Thomas Huertas  
Member – Financial Services  
Authority (United Kingdom)



Thomas Schmitz-Lippert  
Member - Bundesanstalt für  
Finanzdienstleistungsaufsicht  
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Fernando Vargas  
Member - Banco de España  
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Andrzej Reich  
Member - Narodowy Bank  
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Jukka Vesala  
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Didier Elbaum  
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Arnoud Vossen  
Secretary General –  
De Nederlandsche Bank  
(The Netherlands)



Patrick Amis  
Deputy Secretary General -  
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*The CEBS Secretariat (from left to right): Guy Haas, Wolfgang Strohbach, Oleg Shmeljov, Michelle Humphries, Sophie Vuarlot-Dignac, Patrick Amis, Ines Rivas Garcia, Birgit Hoepfner, Matej Pollick, Efstathia Bouli, Corinne Kaufman, Vera Luz, Aimee Staude, Arnoud Vossen, Carlos Corcostegui, Alison Smith, Joseph Mifsud*

CEBS's plenary meetings are held four times a year and additional meetings are convened when necessary. The Committee aims to work by consensus of its members, however, following the Lamfalussy review process and Commission's Communication calling for a clearer framework for the Level-3 Committees, it was decided that if consensus cannot be reached, decisions should be taken by qualified majority voting.

CEBS is committed to conducting its work in an open and transparent manner, and to satisfying both formal requirements and public expectations for public consultation and accountability. CEBS is required by its Charter to conduct public consultations with market participants, consumers, and end-users before submitting advice to the Commission or publishing standards, guidelines, or recommendations. Public consultations assist CEBS in analysing regulatory issues, identifying possible solutions, and exploring good market practices by allowing it to benefit from the expertise of market participants and other interested parties. Consultation also enhances the openness and transparency of CEBS's work, helps to foster dialogue between interested parties, and ultimately promotes understanding of the Committee's work. It also helps to develop a consensus among interested and affected parties on the appropriateness of regulatory and supervisory policies.

To deliver these aims, a flexible and proportionate approach to consultation that can be adapted according to the significance of an issue is required.

In order to cover areas where the policy issues under consideration are likely to have significant structural and cost implications to consumers, investors and/ or market participants, a common impact assessment methodology had been developed jointly with CESR and CEIOPS. The 3L3 Committees conducted pilot studies to establish that the guidelines work effectively.

In addition to the formal consultation process, CEBS uses other methods of dialogue and interaction with market participants and end-users to obtain input for its consultation papers. These methods include panel discussions, public hearings, technical workshops, questionnaires, informal contacts and meetings with industry expert groups appointed by the Consultative Panel, which acts as an external advisory board to CEBS (detailed information about the role and membership of the Panel can be found in Annex 5.2.1).

# 3. Overview of work undertaken in 2008 and progress made

## 3.1. THE FACILITATING ROLE OF CEBS DURING THE CRISIS

As the crisis unfolded, CEBS successfully put in practice its pre-planned mechanism for providing a hub for its Members in situations of stress, facilitating the exchange of information and supervisory decisions, and liaising with the European institutions. This increased communication has taken various forms, from increasing representations to EU political institutions, Bureau discussions, exchanges between the Chair and fellow Chairs of CESR and CEIOPS and conference calls, plenary meetings and working group meetings of CEBS Members.

Notably, CEBS has acted as a facilitator between home and host supervisors in the current crisis in relation to AIG, Lehman Brothers, and the Icelandic banks, including conducting mapping exercises with a view to identifying the materiality of exposures held by other EU banks and facilitating exchanges of information and consistent supervisory responses.

In drawing lessons from the crisis, CEBS will contribute towards further enhancing, in colleges of supervisors in particular, communication in advance of a crisis, – an essential condition for good communication in times of stress – and the use of internationally agreed memoranda of understanding for crisis resolution. CEBS is also supporting and has provided input into the European Commission's proposals for further harmonising early intervention, sanctioning and other supervisory powers in Europe, as well as providing a framework for increased convergence of deposit guarantee schemes.

## 3.2. CEBS's RESPONSE TO THE CRISIS

In 2008, the work programme of CEBS has seen a shift away from own initiative work due to the increasing number and relevance of projects related to requests from European institutions, centred on technical advice on CRD-related issues, the follow-up work from the conclusions of the Lamfalussy review, and the follow-up actions to the money and credit markets' turmoil following the US sub-prime crisis.

Against the background of the current revision of the CRD, CEBS will have an important role in ensuring consistent transposition and application of the new rules across the EU.

In response to a first roadmap agreed by the Ecofin in October 2007, CEBS provided input in particular on:

- Proposals to remedy cyclical effects in the CRD through a buffering mechanism that would address potential procyclicality in the evolution of probabilities of default over the credit cycle. This work will be finalised in 2009.
- The revision of the rules on incremental risk charges in the trading book. The current regime will be extended in order to be more risk sensitive and to produce more accurate capital requirements. The amendments to the CRD are based mainly on similar changes to the Basel Accord. CEBS will examine whether further supervisory guidance is required.
- Large exposures, where CEBS issued its technical advice to the European Commission in April 2008. The advice was transposed to a large extent into the revised CRD provisions. One major issue will be the new definition of "connected clients" which has been amended in order more effectively to avoid concentrations of risk by limiting the granting of loans to legally or economically connected parties.
- The monitoring of the developments in Europe as regards the implementation of Governments' rescue measures for the banking and financial sector<sup>2</sup> where CEBS focused on three main areas: (i) an overview of the national plans, including the tools, conditions and supervisory involvement, (ii) an assessment of general measures for the stabilization of the markets, and (iii) potential areas for further work by CEBS. In that respect, CEBS indicated that it would, in particular, carry out further work in 2009 on the quality of capital in the context of the revision of the Capital Requirements Directive, by issuing further guidance on the definitions of hybrid instruments and core Tier 1, so that they incorporate only instruments that have the highest quality in terms of loss absorbency and flexibility of payments.



- The challenges raised by the valuation of complex or illiquid assets by banks, where CEBS put forward a set of issues and recommendations<sup>3</sup> that should be addressed by institutions and accounting and auditing standard setters in order to improve the reliability of the values ascribed to these instruments, as well as the transparency on valuation practices and methodologies and related uncertainty. CEBS has assessed in early 2009 the progress made in addressing its recommendations, in particular as regards the impairment of financial assets<sup>4</sup> and will continue its close monitoring of accounting and auditing developments.
- Banks' transparency with regard to the activities and instruments affected by the recent market turmoil, where CEBS identified examples of disclosures which it believes represent good practice including; comprehensive disclosures on business models and risk management, meaningful disclosures on exposures and impacts, with appropriate levels of granularity; useful disclosures on accounting policies; and improved presentation of the disclosures. CEBS believes that these good practices will contribute to the improvement of disclosures on exposures and activities affected by the market turmoil. In 2009, CEBS will continue its close monitoring of the progress made in this area and will decide upon future action if needed.

Following the first meeting of the G20<sup>5</sup> and the detailed recommendations it adopted, the EFC set up a roadmap for the EU response to such recommendations.

CEBS contributed to a significant number of short-term deliverables that were presented to the EFC in March 2009. Among these were proposals for enhancing risk management<sup>6</sup> and stress testing practices for banks and their monitoring by supervisors, the elaboration of good practices for remuneration policies<sup>7</sup> in banks and the definition of liquidity buffers<sup>8</sup> as part of the follow-up to its 30 recommendations on liquidity risk management published in September 2008. Our members have continuously been stepping up their efforts in the area of liquidity supervision and closely monitor banks' liquidity positions.

In 2009, CEBS will continue monitoring and providing input in response to the crisis and has prioritised its work programme accordingly.

### 3.3. THE CONVERGENCE OF SUPERVISORY PRACTICES

In 2008 CEBS continued to devote a significant part of its efforts and resources towards further enhancing the convergence of supervisory practices and cultures in Europe.

As regards supervisory practices, this work developed mainly in three directions, the functioning of colleges of supervisors, efforts to reduce options and national discretions in the CRD, and the continued harmonisation of the supervisory reporting framework.

3 CEBS's report on issues regarding the valuation of complex and illiquid financial instruments; [http://www.c-eps.org/getdoc/2ba0267b-bff2-406d-ba69-0ca47279ec1f/20080618b\\_valuation.aspx](http://www.c-eps.org/getdoc/2ba0267b-bff2-406d-ba69-0ca47279ec1f/20080618b_valuation.aspx)

4 Assessment of measures taken with respect to the issues raised in the CEBS June 2008 Valuation report: [http://www.c-eps.org/getdoc/500aa873-8b64-4d01-9469-852b86a02144/CEBS-2009-25-rev2-\\_Assessment-of-follow-up-measure.aspx](http://www.c-eps.org/getdoc/500aa873-8b64-4d01-9469-852b86a02144/CEBS-2009-25-rev2-_Assessment-of-follow-up-measure.aspx)

5 The G-20 is an informal forum that promotes open and constructive discussion between industrial and emerging-market countries on key issues related to global economic stability. By contributing to the strengthening of the international financial architecture and providing opportunities for dialogue on national policies, international co-operation, and international financial institutions, the G-20 helps to support growth and development across the globe.

6 CEBS consults on high-level principles for risk management: <http://www.c-eps.org/Publications/All-consultations/CP21-CP30/CP24.aspx>

7 CEBS's high-level principles on remuneration policies: <http://www.c-eps.org/getdoc/34beb2e0-bdff-4b8e-979a-5115a482a7ba/High-level-principles-for-remuneration-policies.aspx>

8 CEBS's interim report on liquidity buffers and survival periods: <http://www.c-eps.org/getdoc/8ace11f4-cc0f-4563-828a-c8d938446019/Interim-report-on-Liquidity-Buffers-and-Survival-P.aspx>

## Colleges

Since its establishment, the Committee has actively worked on strengthening the supervisory co-operation with regard to cross-border banking groups, promoting the setting up of supervisory colleges and monitoring their efficient functioning.

Taking into consideration the progress already achieved in this area, CEBS issued in April 2009 a paper<sup>9</sup> that reflects current good practices that some supervisors of large EU cross-border banking groups have established or are currently developing to shape their co-operation within Colleges of supervisors under the scope of legislation currently in force. In January 2009, CEBS published a revised template for written agreements between supervisors and, together with CEIOPS, ten high level principles for the functioning of colleges.

In accordance with the requirements set out in the revised CRD, CEBS has just recently started work on operational guidelines for the colleges of supervisors, as well as for joint risk assessment and joint decision-making within the Supervisory Review Process, with the goal of fostering convergence in European supervisory practices.

Finally, in December 2008, CEBS members committed to setting up colleges for all the major cross-border banks in Europe by the end of 2009.

### Options and national discretions

CEBS delivered its advice on the reduction of options and national discretions in the CRD<sup>10</sup> in October 2008. CEBS's advice to the European Commission, in parallel with the expiration of some options and national discretions, will result in a significant reduction of the present discretions available for EU members in the CRD. This reduction is expected to have a positive effect on supervisory convergence in Europe and will diminish compliance costs for institutions. Further work is currently carried out with the European Commission in 2009, in order to incorporate findings of the advice in the revised CRD and to develop the proposal further.

### The supervisory reporting framework

In 2008, CEBS launched several projects on streamlining and harmonising reporting formats with the objective of delivering EU-wide harmonised reporting formats for FINREP (consolidated and sub-consolidated financial reporting for supervisory purposes based on IAS/IFRS as endorsed by the European Union) and COREP (consolidated, sub-consolidated

and solo reporting of the Pillar 1 capital requirements and own funds based on the Directives 2006/48/EC and 2006/49/EC), consistent with the request from the EU Institutions.

Reporting templates will be streamlined and harmonised and more detailed guidance on the implementation of the reporting formats will be made available in order to reduce uncertainties over the terms of data definitions and implementation. Reporting frequency and reporting dates will be harmonised.

CEBS will continue to recommend the use of XBRL as it will lead to greater harmonization of IT formats with the adoption of XBRL taxonomies.

### Common supervisory culture

In the context of the development of a common supervisory culture, in conjunction with CESR and CEIOPS, CEBS has started to enhance its training and staff exchange mechanisms and programmes. In addition the common impact assessment methodology developed in a joint effort with CESR and CEIOPS was put into practice in 2008 and will be generalised in 2009.

## 3.4. PROGRESS IN THE INSTITUTIONAL SETTING OF SUPERVISION IN EUROPE

The unfolding of the crisis has further highlighted the need for further convergence in regulatory and supervisory practices within Europe, triggering a series of European initiatives –from the so called “Lamfalussy review”<sup>11</sup> to the de Larosière Report<sup>12</sup> aimed at taking new steps in this direction. CEBS supports these initiatives generally.

CEBS contributed to the review of the Lamfalussy approach initiated by the European Institutions in 2007. Several of its proposals<sup>13</sup>, aimed at fostering an evolutionary approach to the convergence of supervisory practices in Europe, were taken up in the report of the inter-institutional monitoring group and confirmed in the Ecofin conclusions.

Based on the conclusions of the Lamfalussy review, CEBS decided to modify its Charter, incorporating most notably a peer review mechanism and qualified majority voting in its decision-making process.

CEBS regards a strong peer review mechanism as an important convergence tool. Its peer review mechanism was

9 CEBS's good practices paper on functioning of supervisory colleges

10 CEBS's Technical Advice on Options and National Discretions: <http://www.c-eps.org/Publications/Advice/2008/CEBS-technical-advice-to-the-European-Commission.aspx>

11 The Lamfalussy process was introduced to improve and speed up financial market legislation, and improve the way supervisory co-operation is structured. The Lamfalussy review held in 2007 in order to assess how well CEBS, together with our sister committees CESR and CEIOPS, are meeting the challenge of giving the EU a more effective regulatory system for financial services.

12 In October 2008, the European Commission mandated a high-level group chaired by Jacques de Larosière to give advice on the future of European financial regulation and supervision. The report was published in February 2009.

13 CEBS's annual report 2007: <http://www.c-eps.org/documents/Publications/Other-Publications/AnnualReport/AR2007.aspx>

successfully tested for the first time in 2008/2009, focusing on the implementation of CEBS's guidelines relevant to the supervisory validation of banks' internal models<sup>14</sup>. The next peer review will focus on the functioning of colleges of supervisors for large European cross-border banks.

CEBS is dedicated to enhancing further the harmonised implementation by supervisors of its guidelines and recommendations, and will develop in 2009 new mechanisms in that respect, such as the monitoring of the implementation of new guidelines and dedicated training programmes associated with them, and the enhancement of the existing framework for supervisory disclosures.

CEBS also established a qualified majority voting mechanism, whereby each Member country has the same number of voting rights as in the Council, as set out in the Nice Treaty, in situations where no consensus can be reached. CEBS's decisions remain legally non-binding in the current environment. However, regardless of how the decisions are taken are, they are subject to a "comply or explain" mechanism. Members that do not intend to apply the measure in such a case will state their reasons in full, clarifying in detail the legal, political or technical impediment<sup>15</sup>. This statement will be made public. Moreover, CEBS may invite that member to endeavour to adapt accordingly its legal or regulatory framework and report on progress, if possible.

Finally, the mediation mechanism established in 2007, following the blueprint developed by CESR, will be further enhanced with its integration into the revised CRD. CEBS would provide non-binding mediation between its members, in cases where a common view cannot be reached in setting up Pillar 2 capital requirements for cross-border European banks.

The Ecofin conclusions (December 2007) following the Lamfalussy review were also incorporated by the European Commission into its revised decision establishing CEBS<sup>16</sup>, published in January 2009, together with the revised decisions establishing CESR and CEIOPS.

The revised decision provides for a non-exhaustive set of tasks to be allocated to CEBS, notably as regards the regular assessment of risks in the European banking system. CEBS carried out a pilot risk assessment in 2008, in co-operation with the BSC. The first half yearly risk assessment was communicated to the EFC-FST in March 2009.

In August 2008, CEBS and BSC enhanced their co-operation in the area of financial stability monitoring and clarified their respective roles by formalising their working arrangements. CEBS and the BSC have a good tradition of co-operation, with CEBS focusing on supervisory convergence and facilitating information exchange between supervisory authorities within the EU and the BSC focusing more on topics which are related to financial stability within the EU banking sector. The two committees have already in the past undertaken joint work, each drawing on its specific competencies.

Since the end of 2008, CEBS has also been providing input to the reflections on the reform of the institutional architecture for financial supervision in Europe. CEBS in particular responded to the consultation initiated by the European Commission, following the publication of the de Larosière Report.

CEBS is already taking concrete steps to enhance its capabilities, notably by reinforcing the resources and staff allocated to its Secretariat. CEBS, CESR and CEIOPS are expected to receive EU funding in 2010.

### 3.5. CO-OPERATION WITH THIRD COUNTRIES

In addition to interacting with other committees and European institutions, CEBS actively follows the work of global standard-setters and co-operative organisations such as the Basel Committee on Banking Supervision (BCBS), the International Accounting Standards Board (IASB), and the Joint Forum. CEBS became an observer at the BCBS and attends the meetings of the BCBS and some of its substructures. CEBS members and observers are regularly updated on recent developments at the BCBS.

To support co-operation with third country supervisors, CEBS has organised exchanges of information among its members on issues arising from the implementation of Basel II/CRD by institutions with third-country establishments, especially in view of the different implementation schedules adopted in the EU and the United States.

Contacts and exchanges of information with supervisors from a number of jurisdictions have also taken place at CEBS level. CEBS, in co-operation with the other two Level-3 Committees, plans to open its 2009 sectoral and cross-sectoral courses to the staff of third countries' supervisors in an effort to further support the process of regulatory and supervisory convergence at the global level.

14 CEBS review the implementation of the Guidelines on Validation: <http://www.c-eps.org/News—Communications/Latest-news/CEBS-reviews-the-implementation-of-the-Guidelines-.aspx>

15 As developed in Article 5.6 of CEBS's Charter (see Annex 5.1.4)

16 CEBS's Annual Report 2008, Annex 5.1.3

## 4. CEBS's achievements in 2008

During 2008 CEBS pursued its work on achieving further convergence in the regulatory and supervisory field, focusing on the five key areas of its mandate: supervisory practices, supervisory policies, reporting and transparency, cross-sectoral issues and supervisory culture. The work fully took account of the developments from the financial crisis and was geared towards providing short and medium-term answers to the crisis, in co-ordination with the other initiatives taken at European and international level.

### 4.1. CONVERGENCE OF SUPERVISORY PRACTICES

#### 4.1.1. Functioning of supervisory colleges

Co-operation between home and host supervisory authorities has been high on the CEBS's agenda since its establishment and remained one of its top priorities for 2008 and beyond. During 2008, CEBS has actively worked to enhance the role of colleges in co-ordinating supervisory activities and decisions, as well as enhancing the exchange of information between relevant authorities. This work has resulted in the publication of three papers in 2009: Ten common principles for the functioning of colleges (jointly published by CEBS and CEIOPS), a revised Template for written agreements between supervisors for the functioning of colleges and a paper summarizing the good practices that supervisors of large EU cross-border banking groups have established or are currently developing to shape their co-operation within colleges of supervisors.

##### 4.1.1.1. Ten common principles for the functioning of colleges<sup>17</sup>

CEBS and CEIOPS, together with their Interim Working Committee on Financial Conglomerates (IWCF)<sup>18</sup>, published in January 2009 ten principles for the functioning of supervisory colleges, with the aim of enhancing the functioning of colleges and thus increasing co-operation between the different supervisory authorities involved in the supervision of cross-border groups.

The ten common principles are relevant for the banking and insurance sectors, including financial conglomerates dimension and will provide a basis for further work regarding the functioning of colleges of supervisors. These common principles are based on the existing work and supervisory experience of the Committees, including their recent experience of the functioning of colleges of supervisors in a crisis situation.



*Jukka Vesala  
Chair of CEBS's Groupe de Contact  
(Finanssivalvonta - Finland)*

##### 4.1.1.2. Template for written agreements between supervisors<sup>19</sup>

In January 2009, CEBS published a revised Template for written agreements between supervisors for the functioning of colleges. The Template provides operational guidance for supervisors when drafting written agreements for co-operation, aiming to achieve consistency across colleges. At the same time, the Template is intended to be flexible enough to be adapted to the specific organisation of each college.

The Template may be updated in the future, based on the experience gathered by CEBS in the functioning of colleges.

##### 4.1.1.3. Colleges good practices paper

In April 2009, CEBS published its good practise paper<sup>20</sup> on functioning of supervisory colleges. The paper reflects current good practices that some supervisors of large EU cross-border banking groups have established or are currently developing to shape their co-operation within Colleges of supervisors under the scope of legislation currently in force. The good practices build upon the progress already achieved by CEBS in fostering home-host co-operation for cross-border supervision, including its Template for a Multilateral Co-operation and Coordination Agreement on the Supervision of Cross-Border Groups, its paper on the delegation of supervisory tasks and the 10 principles for the functioning of Colleges issued jointly with CEIOPS.

<sup>17</sup> Colleges of Supervisors – 10 Common Principles

<sup>18</sup> Now renamed Joint Committee of Financial Conglomerates (JCFC).

<sup>19</sup> "Template for a Multilateral Co-operation and Co-ordination Agreement for the Supervision of the XI Group": [http://www.c-eps.org/getdoc/aaafdb97-f131-4af6-96b5-34720c1bd2ad/CEBS-2007-177-rev-4-\\_template-for-written-agreemen.aspx](http://www.c-eps.org/getdoc/aaafdb97-f131-4af6-96b5-34720c1bd2ad/CEBS-2007-177-rev-4-_template-for-written-agreemen.aspx)

<sup>20</sup> CEBS's good practices paper on functioning of supervisory colleges

## NEXT STEPS

Enhancing the functioning of colleges of supervisors will remain a key priority for the Committees. Further the committees will, in close co-operation with each other, focus their future work on enhancing and monitoring the coherence of the supervisory practices of the different colleges.

To this end, CEBS Secretariat Members have started participating in colleges as observers, and CEBS will design guidelines for the operational functioning of colleges, particularly on joint assessment, following the revision of the CRD.

In accordance with Article 131a of the proposed revision of the CRD, all EEA cross border banking groups will need to have a college of supervisors in place by the end of 2010.

CEBS and its Members have set out an action plan for the establishment of supervisory colleges for 36 of the largest European cross-border banking groups by December 2009. Those colleges involved in the Subgroup on Operational Networking (SON) should have their written agreements in place by June 2009.

### Colleges of supervisors for large cross border banking groups in the EU

Name of bank	College operational	College being set up in 2009
AB Bankas SNORAS	X	
Allied Irish Banks Plc (AIB Group)	X	
Alpha Bank AE		X
Banco Bilbao Vizcaya Argentaria SA (BBVA)*	X	
Banco Comercial Portugues SA	X	
Banco Santander SA	X	
Bank of Cyprus Group		X
Barclays Group		X
Bayern LB (Bayerische Landesbank)	X	
BNP Paribas	X	
Commerzbank AG	X	
Credit Agricole Group	X	
Danske Bank A/S		X
Deutsche Bank AG	X	
Dexia	X	
EFG Eurobank Ergasias SA		X
Erste Group Bank	X	
HSBC Holdings Plc		X
ING Groep NV	X	
Intesa Sao Paolo	X	
KBC Group	X	
Lloyds Banking Group*		X
Marfin Popular Bank Group Public Co Ltd		X
National Bank of Greece SA	X	
Nordea Bank AB	X	
OTP Bank Plc		X
Rabobank Group		X
Raiffeisen Zentralbank Oesterreich AG (RZB)	X	
SEB (Skandinaviska Enskilda Banken AB)	X	
Societe Generale	X	
Svenska Handelsbanken		X
Swedbank AB	X	
The Governor and Company of the Bank of Ireland (Bank of Ireland)	X	
The Royal Bank of Scotland Group (RBS)		X
Unicredit SpA	X	
Volksbank AG (VBAG)	X	

\* For these banking groups, the limited cross-border activity within the EEA will be taken into account for the establishment of their college and for the written agreement amongst supervisory authorities involved.



#### 4.1.2. Implementation of the CRD

##### 4.1.2.1. Implementation issues relating to the CRD

During recent years, CEBS has been significantly involved in the implementation of the Capital Requirements Directive. One avenue of work was collecting and analysing Basel II implementation issues that cross-border banking groups and their supervisors believed to be the most challenging from a cross-border perspective. This work has resulted in the publication of the Range of practices on some Basel II implementation issues<sup>21</sup> in August 2008.

Some of the topics addressed in the paper were raised by the Industry Platform on Operational Networks; others were identified by supervisors of cross-border banking groups.

The paper addresses topics related to model validations (delegation/division of tasks between supervisors, local and central models, portfolio classification, use test, supervisory assessment of group-wide models, language of IRB/AMA applications), certain technical aspects of Pillar 1 (definition of defaults, downturn LGD, project finance, estimation and validation of parameters in "low default portfolios") and wider Pillar 2 related issues (scope of application of ICAAP, approaches to imposing requirements for ICAAP).

This paper is an additional contribution from CEBS's work on implementation issues, and is part of the operational mechanisms put in place by CEBS in order to promote practical convergence. For some of the issues mentioned in the paper a concrete answer has been provided, while for other issues a catalogue of pragmatic approaches has been presented which, on the basis of the current experience of both supervisors and banking groups, appear to be broadly consistent.

#### NEXT STEPS

CEBS is continuing to address issues arising from implementation of the EU banking legislation and CEBS Guidelines, some of them are being resolved through a structured query mechanism and others by clarifying and refining existing guidelines or developing new ones (e.g. in the area of Pillar 2 implementation and colleges of supervisors).

##### 4.1.2.2. Technical aspects of diversification under Pillar 2

Given the challenges faced by institutions and supervisors in the implementation of Pillar 2, CEBS has started developing supervisory tools to assist supervisors in their ICAAP-SREP dialogues with institutions. The first topic to address was the diversification benefits in Pillar 2. In June 2008 CEBS published a Consultation paper on technical aspects of diversification under Pillar 2<sup>22</sup>, in which CEBS presented its current thinking on the areas of supervisory interest regarding an institution's management structure, organisation and internal controls within the framework of risk diversification effects claimed under Pillar 2. In CEBS's view the considerations presented in the paper could form part of a broader assessment of economic capital models where they incorporate diversification assumptions.

After receiving industry comments, CEBS has clarified that the document is intended to serve as a flexible tool for the dialogue between supervisors and institutions under Pillar 2 (the ICAAP-SREP dialogue) and to provide an overview of areas of potential supervisory interest relating to diversification. It does not set standards or requirements for the recognition of diversification effects.

21 Range of practices on some Basel II implementation issues <http://www.c-eps.org/getdoc/31fd16a2-ed08-4a46-8710-773b0fe9e2a3/20080812B2.aspx>

22 Consultation paper on technical aspects of diversification under Pillar 2 (CP20) <http://www.c-eps.org/Publications/Consultation-Papers/CP11-CP20/CP20.aspx>



### NEXT STEPS

The revised version of this supervisors focused document will be published in 2009 as a technical annex to the CEBS Guidelines on Application of the Supervisory Review Process under Pillar 2 (GL03) and added to the Compendium of Guidelines (Electronic Guidebook).

To continue with the implementation aspects of Pillar 2, CEBS is currently looking into wider aspects of concentration risk. In this regard CEBS is progressively updating its Guidelines on concentration risk with a view to extending the scope of the definition of concentration risk and the focus of the guidelines from credit risk factors to other risk factors and their concentrations (e.g. inter-risk concentration risk, credit, market, operational, business/strategic and liquidity risk concentrations).

#### 4.1.2.3. Operational risk

Since the publication of the Guidelines on the validation and assessment of the Advanced Measurement and Internal Based Approaches (GL10) in April 2006, the need for further guidance and clarification has emerged in certain areas. In 2008, CEBS decided to develop a series of semi-independent guideline documents addressing some of those issues at an individual level and to start to collate them into a comprehensive compendium ("Supplementary Guidelines on implementation issues on operational risk"). The three topics covered in 2008 were the scope of operational risk and operational risk loss, the use test for AMA firms, and the allocation of AMA capital.

The guidelines on "The scope of operational risk and operational risk loss" identify industry practices for the definition and categorisation of both concepts and aim to allow firms and their supervisors to achieve high standards in terms of capturing and representing their operational risk profile.

Next, the guidelines on "The use test for AMA firms" arise from the consideration that the use test obliges an AMA firm to ensure that its operational risk measurement system is not solely used for calculating regulatory capital, but is also integrated into the day-to-day business process, embedded within the various entities of the group and used for risk management purposes on an on-going basis. The document identifies supervisory expectations in terms of performing a use test and integrating the operational risk measurement system into day-to-day practices.

Finally, the guidelines on "The allocation of AMA capital" describe the range of allocation mechanisms which are currently used by major EU banking groups and outline a range of sound practices in terms of assessments of allocation mechanisms and home/host related issues.

Apart from that work, CEBS surveyed banks' and supervisors' reactions to the rogue trading loss at Société Générale, in order to ensure that the necessary lessons were drawn from the event. The main findings of the survey were consistent with the reports issued by some supervisory authorities and pointed in particular - having in mind that the human factor is regarded as one of the most important drivers in such severe losses - to the need for a strong governance, a strong control culture and a greater involvement of senior management in fostering a sound culture and appropriate incentives for both front office and control functions. A summary of the results of the survey was published in July 2008.

### NEXT STEPS

CEBS will continue updating its guidelines on operational risk in 2009. It has already published for consultation, in April 2009, guidelines on Operational Risk Mitigation Techniques and will draft guidelines on the management of operational risk in market related activities. It has also started to work on new operational risk indicators for TSA/ASA banks.

#### 4.1.3. Other Regulations - Passport notifications

With the implementation of Directive 2004/39/EC on Markets in Financial Instruments (MiFID), questions arose with respect to the incorporation of investment services activities in notifications based on Directive 2006/48/EC relating to the Taking up and Pursuit of the Business of Credit Institutions (recast), as well as to the possible need to adapt existing passport notification forms under Art. 25 and 28 of the latter Directive, and the possible need to define certain terms used in the notification forms.

In order to clarify those questions, CEBS worked in 2008 on guidelines for passport notifications<sup>23</sup>, which provide principles and modalities for co-operation between EEA supervisory authorities with respect to the new notifications of services and activities provided by credit institutions. The guidelines provide uniform forms for the notifications of cross-border services and the establishment of branches, a list of supervisory authorities to be notified in cases of the establishment of a branch or provision of cross-border services, a list of public registers of credit institutions in various Member States, a list of competent bodies for the receipt of complaints and out-of-court settlement of complaints, a list of compensation schemes, and a template for a joint agreement.

23 See CP22 "Guidelines for passport notifications": <http://www.c-eps.org/getdoc/d16dce09-70b9-4c8e-b9b4-67046e51ca2f/2009-11-Feb-Guidelines-for-passport-notifications.aspx>



### NEXT STEPS

The draft guidelines for passport notifications have been published for consultation in February 2009. The final version of the guidelines will be published in June 2009.

## 4.2. CONVERGENCE OF SUPERVISORY POLICIES

### 4.2.1. A harmonised framework for regulatory capital

#### 4.2.1.1. CEBS's proposals for a common EU definition of Tier1 hybrids

In April 2008 CEBS published its final proposals for a common EU definition of Tier 1 hybrids. The proposals encompass the central criteria for the eligibility of Tier 1 hybrids and also the appropriate limits for their inclusion and the treatment of already issued instruments that do not comply with the criteria.

The objective of the proposals was not to create a new definition of eligible Tier 1 hybrid capital instruments, but rather to provide guidelines for a common EU interpretation of the eligibility criteria and to advise the European Commission on the implementation of these criteria in EU legislation.

In its proposal, CEBS requires in particular three key criteria for hybrid capital instruments to be eligible as Tier 1 capital; permanence, flexibility of payment and loss absorbency both in liquidation and on a going-concern basis. In order to ensure that regulatory capital requirements are met without undue reliance on hybrid instruments CEBS also presented two options for limiting the inclusion of hybrid capital instruments in Tier 1 capital.

Since the publication of the CEBS's proposal the European Commission has presented proposals for the implementation of a new hybrids regime in the CRD which were adopted in

May 2009. The CRD amendments which are broadly based on the CEBS proposal will first apply from January 2011.

### NEXT STEPS

In accordance with the revised CRD, CEBS is currently in the process of preparing guidelines for the convergence of supervisory practices with regard to hybrid capital instruments. The draft guidelines will be published in June 2009 for a three months' consultation period.

### 4.2.2. Reducing optionality in the regulatory framework

#### 4.2.2.1. Options and national discretions

In October 2008, CEBS delivered its advice on the reduction of options and national discretions<sup>24</sup> in the CRD. When elaborating its views, CEBS benefited from input provided by the industry both through a formal consultation<sup>25</sup> and in meetings with experts<sup>26</sup> representing a broad range of market participants. CEBS also conducted a high level impact assessment/cost-benefit analysis on its proposals.

The implementation of CEBS's advice to the European Commission, in parallel with the expiration of some options and national discretions, would result in a significant reduction in the present discretions available for EU members in the CRD. The reduction is expected to have a positive effect on supervisory convergence in Europe and will diminish compliance costs for institutions. In its October 2008 advice, CEBS proposed keeping as an option or national discretion 28% of the 152 provisions covered in its analysis. However, approximately one third of these national discretions (8% of the total) will expire within a relatively short period. For the other discretions, CEBS proposed solutions that it believes can

24 CEBS's Technical Advice on Options and National Discretions: <http://www.c-eps.org/Publications/Advice/2008/CEBS-technical-advice-to-the-European-Commission.aspx>

25 CEBS's Consultation Paper on Options and National Discretions: <http://www.c-eps.org/getdoc/5d174851-eb98-4a34-a542-6ab9b6f89eaa/CP18.aspx>

26 List of industry experts on Options and National Discretions: <http://www.c-eps.org/getdoc/1d48fde8-6672-4df5-a526-b406472c6af2/National-Discretions.aspx>

bring about further harmonization of supervisory practices in the EU and a levelling of the playing field among institutions.

CEBS believes its proposals strike the right balance between the prudential concerns of its Members, the flexibility supervisors need to perform their duties and the interests of domestic institutions and those that operate cross-border.

#### NEXT STEPS

As a follow-up to CEBS's advice on options and national discretions of October 2008 and in light of discussions relating to amendments to the Capital Requirements Directive (CRD), in April 2009 the European Commission requested further technical advice from CEBS on a particular subset of options and national discretions, to be delivered in June 2009.

### 4.2.3. Improving the regulatory framework

#### 4.2.3.1. Large Exposures regime

In April 2008, CEBS delivered the second part of its advice<sup>27</sup> on the review of the Large Exposures regime. The Advice was supported by a high-level market failure/regulatory failure analysis of the issues under review. In addition CEBS benefited from market participants' input gathered from a public hearing and a public consultation<sup>28</sup>.

CEBS's advice clarifies the concept of connected clients and proposes broadening the definition to include common sources of funding between counterparties as an indicator of economic interconnectedness. The advice discusses ways of dealing with unsecured interbank exposures which can give rise to systemic risk and moral hazard problems. CEBS proposed (by a majority vote) that all interbank exposures above a specified threshold defined as an absolute amount should be subject to a limit equal to 25% of capital. CEBS believes that this proposal strikes the correct balance between prudential objectives and the concerns expressed by small- and medium-sized institutions.

The advice also discussed the cost and benefits of imposing limits on intra-group exposures. CEBS noted that limiting these exposures would have a significantly different impact on the functioning of different Member States' banking systems. CEBS concluded that the national discretion provided in Article 113(2) of Directive 2006/48/EC, which allows the exemption of these exposures from the limits, should be maintained at this stage and should be extended to exposures that meet the conditions of Article 80 (8).



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*CEBS's Secretary General*  
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#### NEXT STEPS

In December 2008, CEBS initiated its work on the development of Level -3 guidance on the definition of 'connected clients', the treatment of exposures to schemes with underlying assets, and the development of a common reporting template. CEBS expects to deliver its guidelines by the end of 2009.

#### 4.2.3.2. Liquidity risk management

In September 2008 CEBS published the second part of its advice<sup>29</sup> on liquidity risk management. This advice presents an analysis of specific issues arising from recent market developments that may not currently be addressed in the EEA and their impact on liquidity risk management and supervision. It also includes 30 recommendations for credit institutions and investment firms as well as for supervisors. CEBS has provided this advice after an intensive dialogue with its Industry Expert Group on Liquidity<sup>30</sup>, in ad hoc meetings with banking associations and rating agencies and has benefited from the wider input of market participants gathered from a public hearing and through a public consultation<sup>31</sup>.

CEBS's 30 recommendations on liquidity risk management are principles-based and subject to the overarching principle of proportionality. The first 18 recommendations are targeted at credit institutions and investment firms established in the European Union to ensure that adequate liquidity risk management for both normal and stressed conditions is in place. In particular this should be built on diversification of funding sources, appropriate liquidity buffers, robust stress tests and regularly tested contingency funding plans.

27 Second Part of CEBS's Advice on the Review of the Large Exposures regime: <http://www.c-eps.org/Publications/Advice/2008/CEBS-PUBLISHES-ADVICE-ON-THE-REVIEW-OF-THE-LARGE-E.aspx>

28 CEBS's Second Consultation Paper on the Review of the Large Exposures regime : <http://www.c-eps.org/Publications/Consultation-Papers/CP11-CP20/CP16.aspx>

29 Advice on liquidity risk management (2nd Part): [http://www.c-eps.org/getdoc/bcadd664-d06b-42bb-b6d5-67c8ff48d11d/20081809CEBS\\_2008\\_147\\_\(Advice-on-liquidity\\_2nd-par.aspx](http://www.c-eps.org/getdoc/bcadd664-d06b-42bb-b6d5-67c8ff48d11d/20081809CEBS_2008_147_(Advice-on-liquidity_2nd-par.aspx)

30 CEBS's industry Expert Group on Liquidity: <http://www.c-eps.org/Aboutus/Organisation/Consultative-Panel/Industry-expert-groups/Liquidity.aspx>

31 CEBS's Consultation Paper on liquidity risk management: <http://www.c-eps.org/Publications/Consultation-Papers/CP11-CP20/CP19.aspx> and related Feedback document: [http://www.c-eps.org/getdoc/efc7fee6-a633-4054-9188-7ac3f3aa6d1b/20081909CEBS\\_2008\\_146\\_\(Feedback-to-CP19\)-final.aspx](http://www.c-eps.org/getdoc/efc7fee6-a633-4054-9188-7ac3f3aa6d1b/20081909CEBS_2008_146_(Feedback-to-CP19)-final.aspx)

The Board of Directors is ultimately responsible for an institution's liquidity risk strategy and risk tolerance which should be appropriate to the institution's funding profile, its current and prospective activities and the robustness of its risk management, taking into account all liquidity risks, including intra-day and contingent risks, as well as potential constraints on cross-border and intra-group flows. Appropriate responsibilities and incentives, in line with long-term objectives, should be set by senior management.

CEBS's last 12 recommendations target liquidity risk supervision. When considering whether supervisors' requirements could be supplemented or replaced by internal methodologies developed by institutions, a thorough prior supervisory assessment should be in place. Enhanced co-ordination between supervisors should be pursued, in particular through active use of colleges or through delegation of tasks.

While preparing this advice, CEBS liaised closely with other European and global institutions currently reflecting on liquidity risk issues, and particularly with the Basel Committee on Banking Supervision (BCBS), so as to ensure consistency on the key messages.

#### NEXT STEPS

In December 2008, CEBS launched a follow-up work to its recommendations in order to provide detailed implementation guidance for credit institutions on key issues such as liquidity buffers or internal cost allocation mechanisms. An Interim report on liquidity buffers<sup>32</sup> providing information on working assumptions for time horizons, stress scenarios and composition of the buffers was published in March. A Consultation paper is due by mid-2009 and final guidance is expected by the end of 2009.

Further work on liquidity risk supervision has been undertaken with a view to ensuring as much consistency as possible in the context of changing domestic regimes, notably by defining a common set of information to be exchanged in particular within colleges of supervisors ("Identity card on liquidity"). Lessons on home/host issues that have arisen during the 2007-2008 events will also be discussed.

#### 4.2.3.3. Report on custodian banks

In June 2008, the ECOFIN Council formally invited the ESCB and CESR to complete the former draft "Standards for Securities Clearing and Settlement in the EU" and

recommended the exclusion of custodians from its scope. CEBS was invited to further review, in co-operation with CESR, the coverage of risks borne by custodians so as to ensure a level playing field while avoiding inconsistencies in the treatment of custodians and double regulation.<sup>33</sup>

CEBS started its analysis by identifying the ESCB-CESR draft recommendations - for Securities Settlement Systems (RSSS) and for Central Counterparties (RCCP) - that could be considered relevant to custodian banks. CEBS subsequently 'mapped' the draft recommendations with the CRD and other relevant EU Directives and Level 3 guidance applicable to custodian banks.

CEBS focused its work on the custodian banks that are credit institutions subject to the CRD. In doing so, CEBS distinguished between custodian banks that act just as intermediaries providing custody services in the clearing and settlement systems and custodian banks that perform activities similar to those of Central Securities Depositories/International Central Securities Depositories and Central Counterparties, i.e. that internalise clearing and settlement operations. CEBS also benefited from the views of industry representatives.

In its report of December 2008<sup>34</sup>, CEBS concluded that the RSSS and RCCPs relevant to custodian banks participating in the system were covered in the CRD and/or other relevant banking regulations. Regarding the RSSS/RCCP relevant to custodian banks internalising such activities, CEBS found that the recommendations related to the design of the clearing and settlement system were either not met or only partially/indirectly met by the CRD and/or other relevant banking regulation.

In order to gather evidence about the extent to which such activities are performed, CEBS published a call for evidence on 2 February 2009. The responses, summarised in the report that CEBS published on 17 April 2009, led CEBS to conclude that there is little evidence to suggest that action at a European level is needed to address the issue of settlement internalisation.<sup>35</sup>

#### NEXT STEPS

However, in the medium term CEBS will investigate further risk management aspects relevant to banks that take on the role of general clearing member.

32 CEBS's Interim report on liquidity buffers and survival periods (March 2009): <http://www.c-eps.org/getdoc/8ace11f4-cc0f-4563-828a-c8d938446019/Interim-report-on-Liquidity-Buffers-and-Survival-P.aspx>

33 Council Conclusions on clearing and settlement from 3 June 2008: [http://www.eu2008.si/en/News\\_and\\_Documents/Council\\_Conclusions/June/0206\\_ECOFIN.pdf](http://www.eu2008.si/en/News_and_Documents/Council_Conclusions/June/0206_ECOFIN.pdf)

34 Report on custodian banks: <http://www.c-eps.org/getdoc/a9671a67-1dd7-407f-82f8-ca1df2692f6f/CEBS-PUBLISHES-ITS-REPORT-TO-THE-ECOFIN-ON-CUSTODI.aspx>

35 Report on custodian banks' settlement internalisation and CCP-like activities: <http://www.c-eps.org/getdoc/3e3b44ff-f7f7-4d3b-a83f-7e3ecf8e2fc7/CEBS-publishes-a-report-on-custodian-banks'-settle.aspx>



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### 4.3. FINANCIAL INFORMATION

#### 4.3.1. Monitoring accounting and auditing developments

CEBS has been active in monitoring accounting and auditing developments since its establishment as they provide an essential basis for the soundness of banks and the stability of the financial system. The financial crisis brought both topics into the headlines and led to an increased focus on accounting and auditing issues.

##### 4.3.1.1. Valuation of complex and illiquid financial instruments

Following the problems identified with the valuation of complex and illiquid assets in the context of the sub-prime crisis, CEBS was requested by the ECOFIN to contribute to promoting the reliable valuation of assets for markets which become illiquid, while ensuring compatibility with international financial reporting standards.

In June 2008, CEBS published the findings of this work in its Report on issues relating to the valuation of complex and illiquid financial instruments<sup>36</sup>, based on experiences gathered by its members in the course of their supervisory responsibilities and on work carried out in other fora.

The report puts forward a set of issues that should be addressed by institutions and accounting and auditing standard setters in order to improve the reliability of the values ascribed to these instruments. The recommendations cover a number of areas:

- Challenges for the valuation of complex financial instruments or instruments for which no active markets exist where accounting standard setters in particular were encouraged to consider the need for further guidance on measuring fair values while institutions were encouraged to enhance their practices and governance surrounding the use of modelling techniques and risk management practices.

- Wider valuation-related issues, including asset classification issues, the importance of timely impairment and possible changes to impairment rules for assets available for sale.
- The need for enhanced transparency regarding valuation practices and methodologies as well as the related uncertainty.
- The need for auditing standard setters to pursue their efforts to enhance their guidance on auditing fair value estimates.

#### NEXT STEPS

In the report published in June 2008, CEBS announced the follow-up of this work in the form of an assessment of the measures taken in this area. The outcome of this assessment was published in March 2009, as part of CEBS's contribution to the EU's work carried out in response to the G20 declaration and action plan. In summary, the report concluded that there are more improvements to be made, in particular in the area of impairment of financial assets.

##### 4.3.1.2. Monitoring of accounting and auditing developments

As part of the efforts to monitor and address the financial crisis-related developments in the accounting and auditing context, CEBS published in October 2008 a joint statement<sup>37</sup> with CESR and CEIOPS on the latest developments with regard to accounting and fair value.

Further to the work carried out to address issues arising from the global financial crisis, CEBS has continued to devote significant resources to the monitoring of developments in the areas of international accounting and auditing standard-setting.

<sup>36</sup> Report on the valuation of complex and illiquid financial instruments: [http://www.c-eps.org/getdoc/2ba0267b-bff2-406d-ba69-0ca47279ec1f/20080618b\\_valuation.aspx](http://www.c-eps.org/getdoc/2ba0267b-bff2-406d-ba69-0ca47279ec1f/20080618b_valuation.aspx)

<sup>37</sup> CEBS's annual report 2008 - 4.4 Cross sector work – 3L3 statement on the valuation of financial instruments

CEBS has analysed and commented on a significant number of discussion papers, exposure drafts and other due process documents issued by the International Accounting Standards Board (IASB), the International Auditing and Assurance Standards Board (IAASB) and the International Ethics Standards Board for Accountants (IESBA).

All of these contributions are posted to CEBS's website.<sup>38</sup>

The following table provides an overview of the due process documents CEBS commented on in the course of 2008:

### IASB

Dec 2008	Exposure Draft Improving Disclosures about Financial Instruments (Proposed Amendments to IFRS 7)
Nov 2008	Discussion Paper Preliminary Views on an improved Conceptual Framework for Financial Reporting – The Reporting Entity
Nov 2008	Discussion Paper Preliminary Views on Amendments to IAS 19 Employee Benefits
Oct 2008	Discussion Paper Reducing Complexity in Reporting Financial Instruments
Sep 2008	Exposure draft on an improvement Conceptual Framework for Financial Reporting: The Objective of Financial Reporting and Qualitative Characteristics and Constraints of Decision-useful Financial Reporting Information
Sep 2008	Discussion Paper Financial Instruments with Characteristics of Equity
Jan 2008	Exposure Draft ED 9 Joint agreements

Of the due process documents issued by the IASB, CEBS put great emphasis on the proposals put forward with a View to Reducing Complexity in Reporting Financial Instruments and regarding Financial Instruments with Characteristics of Equity. In addition, the proposals issued in response to the global financial crisis, notably the proposed amendments to IFRS 7 Improving Disclosures about Financial Instruments, were analysed with the greatest care.

### IAASB/IESBA

Oct 2008	Code of Ethics for Professional Accountants
Apr 2008	Proposed New International Standard on Auditing ISA 265, Communicating Deficiencies in Internal Control and Related Conforming Amendments to Other ISAs (ISA 265)
Apr 2008	Proposed International Standard on Auditing 402, Audit Considerations Relating to an Entity Using a Third Party Service Organisation (ISA 402)
Feb 2008	Proposed International Standard on Auditing 505, External Confirmations (ISA 505)
Feb 2008	Proposed International Standard on Auditing 620, Using the Work of an Auditor's Expert (ISA 620)

During 2008 the IAASB completed its Clarity project, which reduced the level of resources CEBS devoted to auditing related issues quite significantly, especially after the last exposure drafts had been analysed. Nevertheless CEBS is actively monitoring developments in that area, particularly as regards the efforts of the IAASB to develop further guidance for the auditing of fair values and fair value estimates. At the same time CEBS also follows accountancy-related issues from a wider perspective, which is reflected in particular in its contribution to the IESBA's revised Code of Ethics for Professional Accountants.

<sup>38</sup> CEBS's contributions : <http://www.c-eps.org/Publications/Other-Publications/Comment-letters-by-CEBS.aspx>.



### NEXT STEPS

CEBS will continue in 2009 its close monitoring of developments in accounting and auditing standards and maintain a close dialogue with standard setters.

It will also review the implementation and content of its guidelines on prudential filters<sup>39</sup>.

### 4.3.2. Increasing transparency

#### 4.3.2.1. CEBS's report on banks' transparency on activities and products affected by the recent market turmoil

In response to the ECOFIN's request of October 2007, CEBS carried out an assessment of the adequacy of banks' transparency regarding the activities and instruments affected by the market turmoil.

CEBS reviewed disclosures made by 22 large banks<sup>40</sup> in the 4th quarter of 2007, as well as in their audited annual reports for 2007. The analysis was not limited to the disclosures on exposures to higher risk assets identified in the crisis, but also to disclosures relating to business models, risk management practices and accounting and valuation practices.

Based on this analysis, CEBS identified a set of good practices for disclosures on activities affected by the market turmoil. The good practices provide institutions with guidance for disclosures on the business model, risk management, exposures and their impact, as well as accounting policies and valuation issues. The good practices are in line with other global initiatives, such as the Financial Stability Forum's (FSF) recommendations.

Although identified in the context of the financial crisis, the good practices observed can easily be transposed for application in a different context and should prove helpful in the preparation of sensible and comprehensive disclosures for a broad range of activities and businesses in normal times and in crisis situations.

CEBS carried out a first follow-up review of the progress made on disclosures by institutions, based on the publication of their mid-year 2008 results. The results of the follow-up confirmed that institutions still needed to make further efforts to align their disclosures with the good practices.

### NEXT STEPS

In 2009, CEBS has committed to monitor further developments in the areas of transparency and disclosures. A second follow-up report, based on banks' 2008 preliminary year-end reports was published at the end of March 2009. Its overall findings showed little improvement in disclosures in comparison to the previous analysis.

CEBS will monitor further progress in this area based on the audited financial statements published for 2008, as well as on the first Pillar 3 disclosures provided by the European banks. Depending on the results of this exercise, CEBS will assess whether further guidance is needed.

39 CEBS's guidelines on prudential filters: [http://www.c-eps.org/getdoc/dcb751c8-9d21-4cf5-85b7-6d0d6d5f5985/prudential\\_filters-21-Dec-2004.aspx](http://www.c-eps.org/getdoc/dcb751c8-9d21-4cf5-85b7-6d0d6d5f5985/prudential_filters-21-Dec-2004.aspx)

40 19 of which originate from the EU

### 4.3.3. Towards a single reporting framework

#### 4.3.3.1. ECOFIN roadmap, FINREP, COREP,

##### Developments in Standardised COREP reporting dates

In 2007, CEBS published a study assessing the level of convergence in the application of the CEBS Guidelines on Reporting (COREP and FINREP). The results of the study demonstrated that more work was needed in the medium term to achieve greater convergence in supervisory reporting, at least for institutions that operate cross-border within the EU. To that end, a road-map pointing towards more standardised supervisory reporting was developed, whose main cornerstones were included in the CEBS's work programme for 2008. Several projects on streamlining and harmonising reporting formats have been launched that will allow CEBS to deliver EU-wide reporting formats for FINREP and COREP, consistent with the request of the EU Institutions.

The scope of the deliverables is the following:

- a. Consolidated and sub-consolidated financial reporting for supervisory purposes based on IAS/IFRS as endorsed by the European Union. These reports are covered by the Guidelines on Financial Reporting.
- b. Consolidated, sub-consolidated and solo reporting of the Pillar 1 capital requirements and own funds based on Directives 2006/48/EC and 2006/49/EC. These reports are based on the Guidelines on Common Reporting.

To achieve a high level of harmonization and strong convergence in regular supervisory reporting requirements, CEBS has decided to revise its current guidelines on COREP and FINREP with the aim of developing a supervisory reporting model with common data definitions.

Regarding FINREP, CEBS has proposed to adopt explicit minimum and maximum reporting requirements, both of which are based on the same set of data definitions. Although FINREP guidelines are not compulsory, Member States using FINREP agreed to rely exclusively on financial information defined in the new FINREP framework, and may neither amend the information templates based on national need, nor require additional information that exceeds the fixed maximum.

Regarding COREP CEBS is requested – according to the CRD – to develop guidelines to introduce, within the Community, a uniform reporting format at the latest by 1 January 2012. The reporting formats shall be proportionate to the nature, scale and complexity of the credit institutions' activities and shall be applied by 31 December 2012.

Reporting templates will be streamlined and harmonised and more detailed guidance on the implementation of the reporting formats will be made available in order to reduce uncertainties related to the templates in terms of data definitions and implementation.

Likewise, reporting frequency and reporting dates will be harmonised.

CEBS will continue to recommend the use of XBRL as it will lead to greater harmonization of IT formats with the adoption of XBRL taxonomies.

#### NEXT STEPS

CEBS published for consultation in March 2009 a proposal for a streamlined and harmonised version of the FINREP reporting guidelines.

A similar exercise has been started for the COREP guidelines, for which the work will extend into 2010.





#### 4.3.3.2. Developments in Standardised COREP reporting dates

As part of its work in promoting a common supervisory reporting framework in Europe, CEBS published in July 2008 amendments to the Guidelines on Common Reporting (COREP) on the standardisation of remittance dates and reporting frequencies for COREP reporting in the EU.

The proposed amendments to the Guidelines must be applied by 31.12.2012 and contain the following features:

- The frequency of reporting is to be quarterly as a maximum, with certain exceptions for allowing for monthly reporting.
- There is a distinction between consolidated and solo data. Consolidated and solo reports must be delivered as a maximum within 40 business days and 20 business days respectively.
- National authorities may provide additional time for reporting by institutions which only operate domestically in order to provide proportionate application of the agreement for these firms.

#### NEXT STEPS

CEBS received numerous comments from its stakeholders on the amendments which will be taken into account in its ambitious projects on streamlining and harmonizing supervisory reporting frameworks.

#### 4.3.3.3. FINREP and COREP implementation questions

CEBS has developed a web-based system for soliciting and publishing technical questions that arise in the implementation of the reporting frameworks.

The goal is to provide a stable, direct, and transparent connection with national experts who deal with these questions. CEBS publishes the implementation questions, along with answers provided by the networks of experts, on CEBS's website<sup>41</sup>. The network also provides a valuable channel for sharing experiences and improving understanding of the approaches used in other Member States. Any interested party can submit questions on the implementation of the CEBS's reporting guidelines (COREP and FINREP).

CEBS expects that this system will improve the consistency and common understanding of the implementation of the Guidelines on Reporting at the national level, simplify the reporting procedures, and reduce the administrative burden on cross-border groups. By the end of 2008, CEBS had published 87 questions on the implementation of FINREP and COREP.

41 <http://www.c-ebs.org/Publications/Q-As/Implementation-Questions.aspx>



#### 4.4. CROSS-SECTOR WORK

The so called 3L3 work – the 3L3 Committees' joint work – is generally focused on achieving convergence between the three financial sectors: securities markets, credit institutions (banks), and the insurance sector and the pensions markets. These different segments of the financial markets are interlinked hence the need for the three sector Committees, CESR, CEBS and CEIOPS, to work together to ensure a European level playing field, consistency in legislative implementation, cost effectiveness and proper assessment of cross-sector risks.

##### 4.4.1. Co-ordination and convergence of practices

###### 4.4.1.1. Joint protocol on 3L3 co-ordination

CESR, CEBS and CEIOPS have co-operated closely ever since the Committees were set up. In 2005 the Committees formalised their co-operation by signing a joint protocol on co-operation. In 2008, the 3L3 Committees updated their protocol to reflect their experiences of joint work and to take into account the latest developments, such as the Lamfalussy review and the deepening of financial crisis. Both the review and concerns about the impact of the crisis on EU financial institutions led to an increased number of requests from EU Institutions<sup>42</sup> and stakeholders to develop the cross-sector aspects. Close co-operation and more aligned positions among the 3L3 Committees became even more important. As the year progressed, meetings among the 3L3 Chairs were held several times a month.

The new 3L3 protocol, which was signed on 8 December 2008 in Brussels, introduces the concept of a co-ordinating Committee. The co-ordinating Committee carries the main responsibility for 3L3 co-ordination on behalf of the 3L3 Committees, on a six month rotational basis, with CESR being the initial co-ordinating committee for the second half of 2008, followed by CEIOPS in the first half of 2009 and CEBS in the second.

##### 4.4.1.2. 3L3 work on cross-sector risks

Identifying cross-sector risk will help the 3L3 Committees, their members and the EU institutions ensure the stability of European financial markets. Following the ECOFIN Council's conclusions of May 2008 and the request to the 3L3 Committees to respond to financial stability concerns of a cross-sector nature, the 3L3 Committees started testing this form of co-operation in a pilot exercise. This was done by organising a joint initiative to address the issue in detail and to find the best way forward by adding a cross-sector dimension to the work of the sector working groups already established earlier for assessing sector risk frameworks.

##### NEXT STEPS

A 3L3 task force on cross-sector risks, accountable to the 3L3 chairs, has been formed in 2009 to make sure that cross-sector financial stability risks are effectively identified. The task force will ensure that, at an early stage, the 3L3 Committees capture cross-sector risks that are relevant to the risk assessment exercises of the Committees: common risks across sectors, risks which are contagious from one sector to another; and endogenous risks where regulatory action in one sector has significant risk implications for another sector. This task force will therefore help with responding to the requirements to identify possible risks across borders and across sectors at an early stage that follow from the revised Commission's decisions establishing the 3L3 Committees.

42 The revised Commission Decisions establishing the Committees, published in January 2009, explicitly require 3L3 co-operation.



#### 4.4.1.3. 3L3 work on home/host delegation

The 3L3 work on delegation and issues of home/host arrangements serves to achieve convergence among regulators and across sectors and markets. Consistent and predictable application of EU legislation across financial sectors leads to a greater level of consistency of application across different jurisdictions and helps supervisors rely on each other's work. In June 2008, the Commission requested the 3L3 Committees to work on voluntary delegation for home and host authorities. The work of the 3L3 will also feed into the Commission's review of the financial services Directives with a view to including provisions on the voluntary delegation of tasks and the analysis of options for voluntary delegation of supervisory competences.

The request related to voluntary delegation of tasks, to the voluntary delegation of supervisory responsibilities and to the legal and practical obstacles to delegation. A 3L3 task force was set up representing participants from the three sectors. In early November 2008, the task force sent a report on delegation of tasks to the Commission. The report sets out 15 key principles which should be followed when delegation of tasks takes place between competent authorities. The principles cover issues such as the legal basis, compliance with national law, liability, confidentiality, transparency and accountability to be followed when delegation of tasks takes place between competent authorities. The 3L3 task force continued its work by mapping obstacles to delegation of supervisory responsibilities and by publishing a questionnaire on the mapping of CESR Members' current legal and supervisory frameworks.

##### NEXT STEPS

The 3L3 delegation task force finalised, in April 2009, its work on delegation as requested by the Commission with a paper on obstacles to voluntary delegation of supervisory responsibilities. The 3L3 Committees stand ready to contribute further to developments in this field, including possible future legislative initiatives.

#### 4.4.1.4. 3L3 statement on the valuation of financial instruments

In October 2008, the 3L3 Committees published a joint statement on the latest developments in accounting. The statement refers to the relevant work undertaken by bodies from the different financial sectors on accounting and fair value. The 3L3 Committees welcomed the urgent work of the IASB and the flexibility shown in terms of the application of mark-to-market valuation. The Committees also welcomed the new regulation from the Commission that promptly implemented this change. The 3L3 Committees supported the aim of arriving at global accounting standards and appreciated the solution found by the IASB regarding the issue of reclassification and thereby avoiding a European carve-out on IAS 39. The 3L3 Committees have also highlighted their support for the clarifications given by IASB in October 2008 with regard to the following:

- management's internal assumptions;
- the use of market quotes;
- results of disorderly transactions; and
- transactions in an inactive market.

##### NEXT STEPS

In 2009, the 3L3 Committees will continue their co-ordination and exchange of information on the sectoral work undertaken on accounting.

#### 4.4.1.5. 3L3 anti-money laundering task force

The 3L3 Committees' Anti-Money Laundering Task Force (AMLTF) was established in the second half of 2006 by CESR, CEBS and CEIOPS, with a view to providing input into anti-money laundering and counter terrorism finance issues, with specific focus on the Third Anti-Money Laundering Directive. It aims to achieve convergence in national implementations of the Third Anti-Money Laundering Directive across the different sectors of European financial markets. On 26 March 2008, the 3L3 Committees launched a joint public consultation on a common understanding of the information on the payer accompanying a funds transfer. The AMTLF has proposed a solution to deal with payments that lack the required information in respect of Regulation 1781/2006 on



information on the payer accompanying transfers of funds and other provisions covering anti-money laundering and terrorist financing. The common 3L3 understanding on the information on the payer accompanying funds transfers to payment service providers of payees has been developed through an informal industry consultation, including a workshop held in January 2008 and was published in October 2008.

#### NEXT STEPS

The AMLTF will continue its work in relation to the practical aspects of the Third Anti-Money Laundering Directive and will, in 2009, produce work on aspects of 'Know Your Customer and Customer Due Diligence'.

#### 4.4.1.6. 3L3 guidelines on cross-border mergers and acquisitions

Directive 2007/44/EC of 5 September 2007 on cross-border acquisitions in the financial sector<sup>43</sup> amends a number of sectoral Directives as regards the prudential requirements to be applied to acquisitions and increases in holdings in the financial sector. The Directive sets out five criteria to be applied by the competent authorities in the EU for the prudential assessment of acquisitions and increases in holdings in the banking, insurance and securities sectors, such as the reputation of the acquirer and its compliance with prudential requirements. In order to develop a common understanding among the members of the 3L3 Committees as to the application of these criteria, the 3L3 Committees set up a 3L3 cross-border merger and acquisitions task force to develop a common understanding of these assessment criteria which resulted in guidelines on the five prudential criteria applicable to the Directive, published in December 2008 by the 3L3 Committees.

The 3L3 Committees have also defined co-operation arrangements in order to ensure an adequate and timely flow of information between supervisors, taking into account the limited time of normally 60 days provided under the Directive for completing prudential assessments. They also established an exhaustive and harmonised list of information that proposed acquirers should include in their notifications to the competent supervisory authorities.

#### NEXT STEPS

In 2009, the 3L3 Committees will further discuss and assess the possibilities of performing additional work in the area of the fitness and propriety requirements for individuals in banks, insurance companies, and investment firms as set out in the sectoral Directives. However, this item has been given a low priority in the 2009 work programmes given the volume of work that needs to be done in other areas following the financial crisis.

#### 4.4.1.7. Impact assessment guidelines

CESR, CEBS and CEIOPS published on 30 April 2008 their joint Impact Assessment (IA) guidelines. These guidelines have been developed as a practical tool to help ensure the effective use of IA within the 3L3 Committees. The guidelines will assist the Committees in making effective policy decisions regarding future regulation and by enhancing credibility and accountability in policymaking and therefore also fostering the efficiency of markets as a whole. The IA guidelines bring additional structure to policymaking and reinforce the Committees' commitment to transparent, evidence-based policymaking. One key feature through which this is achieved is the role given to market and regulatory failure analysis as tools for ensuring that the case for regulatory intervention is considered properly.

The expectation is that IA will apply to the work of the 3L3 Committees where the policy issues under consideration are likely to have significant structural and cost implications for consumers, investors and / or market participants.

The 3L3 Committees conducted pilot studies to establish that the guidelines work effectively. CESR tested the guidelines in relation to the existing simplified prospectus work; CEBS tested them in relation to its large exposures work; and CEIOPS is applying them in its work to deliver advice to the Commission in relation to the Solvency II project.

The 3L3 Committees agreed in January 2009 to set up a 3L3 IA network. The purpose of the network is to provide IA advice and challenge and thereby help ensure a consistent, acceptable, and credible application of the 3L3 IA Guidelines within the L3 Committees. Several members of the network are currently providing IA advice on a number of current work streams within the three committees.

<sup>43</sup> Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (Text with EEA relevance)



#### NEXT STEPS

The 3L3 Committees will continue providing joint 3L3 training to members of the Committees on the application of the guidelines as well as on the implementation and use of impact analysis in their activities.

The IA network will work on developing an IA Toolkit for use by the 3L3 Committees' Members. It is expected that the toolkit will consist of the IA Guidelines, shortened versions of the guidance, useful templates and tables, links to other forms of guidance (e.g. the Commission's own guidelines and documents which help articulate the important role that IA plays in policy making), examples of good practice, training materials and presentations.

#### 4.4.1.8. 3L3 task force on internal governance

In July 2008, the 3L3 Committees set up a common internal governance task force intended to address cross-sector issues related to internal governance. The purpose of the work is to develop, within the current legal framework, cross-sector guidance on internal governance for institutions and conglomerates operating in different financial sectors. In doing so, the task force will identify consequences of differences in Level 1, 2 and 3 measures regulating internal governance which might have a significant practical impact on institutions.

#### NEXT STEPS

The internal governance task force will perform a stock take of the differences between Level 1, 2 and 3 measures on internal governance with regard to MiFID, CRD and Solvency II in the second and third quarters of 2009. The work is expected to be finalised by the end of 2009.

#### 4.4.1.9. CESR-CEBS advice on the review of commodities business

CESR and CEBS published a consultation paper in May 2008 responding to the Commission's joint mandate for technical advice on the review of commodities business with regards to Article 65 of MiFID and Article 48 of the Capital Adequacy Directive (CAD).

The review related to the regulatory treatment of firms providing investment services in commodity and exotic derivatives and the views of the two Committees were sought

on whether the treatment of these types of firms continues to support the intended aims of market and prudential regulation.

The consultation paper began with an overview of the EU commodity derivatives markets, products, trading venues and participants, and included an analysis of possible market and regulatory failures linked to asymmetric information and negative externalities, which provided a framework for the subsequent discussion of policy issues. The two final sections of the consultation paper examined whether the current regulatory framework, as set out in MiFID and CAD, adequately addresses the issues raised in the market and regulatory failure analyses or whether there was a need for amendments. A number of possible options were discussed.

CESR and CEBS published their advice to the Commission in October 2008 and concluded with recommendations in particular concerning the future scope of exemptions which exist in MiFID and the prudential treatment of specialist commodity derivatives firms.

In relation to MiFID, CESR and CEBS saw a case for revising the exemptions in Article 2(1)(i) and (k) by providing a very narrow exemption for the incidental provision of investment services related to commodity derivatives and an exemption for primarily non-financial firms which trade on own account with sophisticated clients. Furthermore, CESR and CEBS recommended that the Commission should consider whether an additional article should be included in MiFID which would clarify that firms covered by the exemptions relating to commodity derivatives in Article 2 shall not be prevented from being authorised as investment firms.

Regarding the prudential treatment of specialist commodity derivatives firms, CESR and CEBS offered two options in their advice. One option would be to require specialist commodity derivatives firms to meet a high-level requirement to have adequate financial resources and qualitative risk management requirements. The second option proposes the full application of CRD to specialist commodity derivatives firms with an exemption from any prudential requirements for firms where this would not impede the overall aims of prudential regulation.



### NEXT STEPS

Both Committees stand ready to provide further assistance should that be needed in the next stages of the process.

#### 4.4.2. 3L3 Work on financial conglomerates

The work on financial conglomerates is led by CEBS and CEIOPS, with CESR participating as an observer. Most of the work of the Interim Working Committee on Financial Conglomerates (IWCFC – renamed JCFC in 2009) during 2008 was related to the measures following the financial crisis and three calls for advice received from the Commission and the EFCC, the European Financial Conglomerates Committee. In 2008, the following issues were dealt with:

- In February 2008, the group published technical advice on the equivalence of the supervision of financial conglomerates in Switzerland and the United States
- In April 2008, a final and third piece of advice was sent to the Commission regarding the eligibility of own funds. According to the comparison of the sector rules two types of differences were identified - differences related to the nature of the business of each sector (treatment of unrealised gains and revaluation reserves, sector specific capital components such as profit reserves for life insurers) and differences unrelated to any business specificities and thus prone to regulatory arbitrage (i.e. calculation method at group level, intra-sector deductions, reference points for deductions, definition/ application of prudential filters)
- In June 2008, and in the context of increased convergence, the IWCFC issued Practical Guidance for supervisors, in relation to the supervision of risk concentrations and intra-group transactions.
- In September 2008, the IWCFC submitted its annual report on macro-prudential developments to the financial stability table on financial conditions and financial stability in European financial conglomerates. It was followed by a survey amongst supervisors on how liquidity arrangements between the banking and insurance parts of financial conglomerates work in practice

- In early October 2008, the IWCFC updated its list of financial conglomerates including identification of the coordinator and relevant competent authorities for each financial conglomerate on the list
- In April 2008, the IWCFC received a call for advice on the review of the Financial Conglomerates Directive (FCD). The Commission also asked the IWCFC to come forward with a range of possible solutions to the issues it has identified in its work to date in three requested areas (language, scope and internal control mechanisms)
- Currently, the JCFC is undertaking a stock-take of the existing national implementation practices of the FCD in the context of its review.

### NEXT STEPS

The JCFC is conducting an impact analysis exercise by developing and incorporating suggested solutions into a paper that will be released for public consultation by the end of May 2009. In January 2009, CEBS, CEIOPS and JCFC have jointly published ten principles regarding the functioning of colleges of supervisors, which are based on their existing work and supervisory experience.

Throughout 2009, the JCFC will conduct further work on the assessment of the crisis and its consequences for the regulation and the supervision of financial conglomerates.

#### 4.4.3. Common supervisory culture – 3L3 training

Training staff of EU regulatory authorities on a cross-sector basis is crucial in achieving a common European supervisory culture. Following the two pilot training courses that were held in the last half of 2007, six additional 3L3 courses were organized in 2008 by members of the Supervisory Committees, or the Supervisory Committees themselves, covering areas such as the supervision of financial conglomerates, credit risk transfer, reputational risk, anti-money laundering, operational risk and risk models. 280 people participated in these courses.



A strong emphasis was placed on ensuring these seminars were as interactive as possible, and that the learning opportunity enabled new information to be applied to real supervisory situations. The 3L3 Committees also continued to organize evening events, especially during two day seminars, in order to give the supervisors the possibility of networking with colleagues coming from other EU supervisory authorities. All these efforts play a supporting role to the sectoral work undertaken by the Supervisory Culture Network (detailed information on sectoral training and staff exchanges can be found under section 4.5.4)

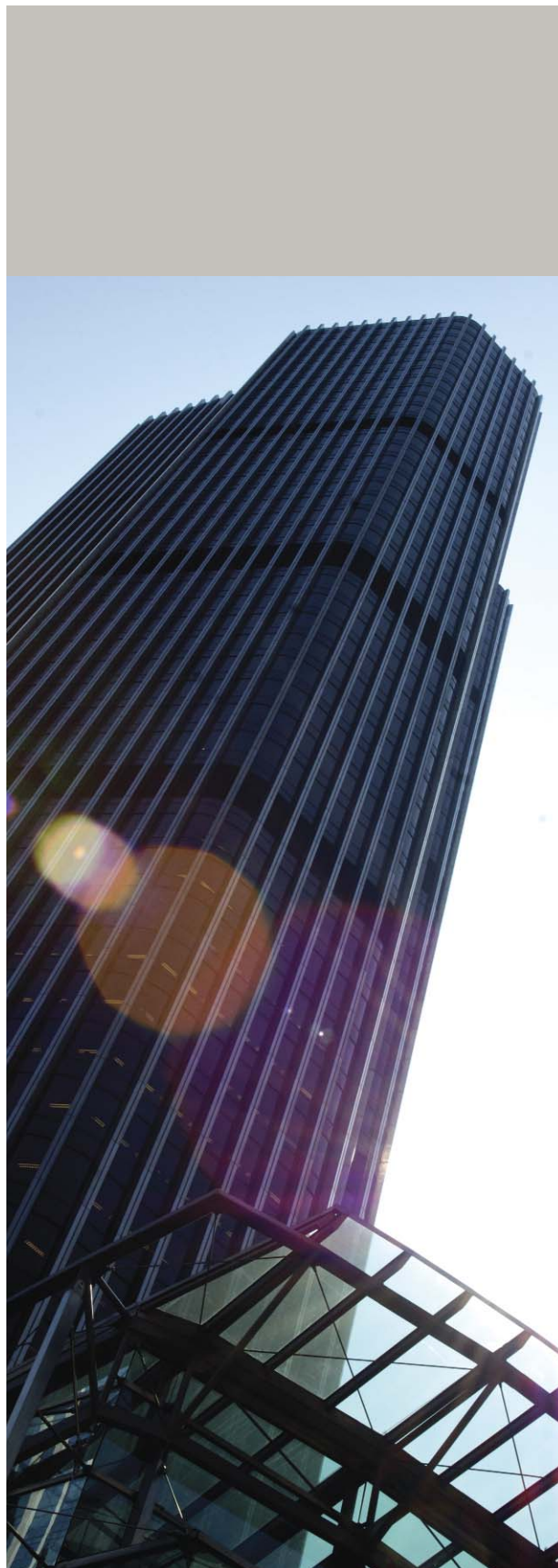
Based on the positive feedback received from members, and in line with the Lamfalussy process that argues for a common supervisory culture in the European Union, the 3L3 Committees decided to dedicate more resources to training activities. The target is to increase the quantitative and qualitative level of the courses offered to supervisors and to continue creating the required link between the 3L3 products and the day-to-day training of members' staff, allowing for swifter implementation of the 3L3 products into the day-to-day supervision of European institutions.

#### NEXT STEPS

The Committees agree that only combined efforts can make the intended 2009 training programme feasible, especially as the target for this year has been doubled to twelve cross-sectoral courses covering areas such as corporate governance, risk management, securitisation, quantitative approaches to risk, conduct of business, supervisory interactions with firms, negotiating skills for European supervisors, assessment of IT systems and application in financial institutions, reputational risk, IFRS and accounting, and impact assessment.

To this end, the 3L3 Committees have applied for EU co-funding and have intensified their efforts to deliver the required results both on a sectoral and cross-sectoral basis.

Also, in 2009 courses will be open to participants from third countries. This will further support the process of regulatory and supervisory convergence at the global level.



## 4.5. COMMON SUPERVISORY CULTURE

CEBS regards the establishment of a common supervisory culture as an essential tool for enhancing the convergence of regulatory and supervisory practices over time. A common supervisory culture is achieved through established peer pressure and supervisory disclosure mechanisms, as well as through the development of common training programmes and staff exchanges.

### 4.5.1. Review Panel and peer pressure

In December 2007 CEBS decided to test its new peer review mechanism on the implementation of the CEBS's Guidelines on the implementation, validation and assessment of Advanced Measurement (AMA) and Internal Ratings Based (IRB) approaches from both home and host perspectives. The focus of this peer review was put on those provisions of the above mentioned Guidelines pertaining to model assessment, decision taking and implementation at national level, both from a home and a host perspective.

The self-assessments prepared by CEBS members were published in June 2008 along with a factual summary report<sup>44</sup>. These assessments have then been challenged by their peers which resulted in a peer review report<sup>45</sup> published in April 2009. It is important to note that this pilot exercise builds on facts relating to 38 cases of validation of advanced approaches (AMA and/or IRB approaches) under the Capital Requirements Directive (CRD) recorded as of end March 2008. As the cases under review were the very first ones some of the report's conclusions may not hold true for subsequent cases.

The peer review report concluded that supervisory authorities have generally complied with the Guidelines' provisions in a practical and sensible manner with regards to home/host co-operation. The review highlighted a few cases of non compliance by members acting as consolidating supervisors. Two members did not always provide adequate information to relevant host supervisors on the facts that formed the basis for the decision. In addition, one member reported that it was not able to reach joint decisions in three validation cases, and three other supervisors reported that in some cases they were not able to reach joint decisions within the indicated six-month deadline. The extension needed in those cases was generally accepted by the relevant host supervisors and the institutions concerned as being the most pragmatic approach to providing them with more time to comment, and in some cases for the institutions to provide more information. In general, the time needed to reach a joint decision appeared to depend strongly on the number of supervisors involved, and the six-month deadline was too short for large cross-border groups.



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In March 2008, CEBS's Review Panel was also requested by the European Commission to conduct a detailed mapping of supervisory objectives and powers as well as the actual use of sanctioning powers across EU banking authorities. Similar requests were put to CEIOPS and CESR and co-ordination was ensured to the extent possible for conducting the sectoral mappings, notwithstanding the special focus put by CEBS on early intervention measures due to another request from the Commission in September 2008.

The report<sup>46</sup> on supervisory powers was published in March 2009. It provides input to the Commission's work on designing possible policy options for early intervention tools for dealing with ailing banks. It also identifies areas where CEBS might wish to prioritize for further convergence of supervisory practices while taking note of possible legal constraints.

In general, if supervisors appear well equipped with enforcement powers in going concern situations, substantial differences crop up in the range of intervention measures available for ailing but solvent banks. This relates both to the measures available as well as to the conditions under which these measures can be taken. In particular, powers towards the persons who effectively direct the business and towards shareholders appear rather fragmented. As for reorganization and winding-up procedures, the respective roles of supervisory and judicial authorities vary significantly although a majority of supervisors at least play a role in such procedures. Such differences are likely to increase problems in co-ordination of supervisory action in cases of ailing cross-border banking groups.

44 CEBS's summary report and CEBS members self-assessments: <http://www.c-eps.org/Review-Panel/Peer-Reviews.aspx>

45 CEBS's peer review report on model validation: <http://www.c-eps.org/Review-Panel/Peer-Reviews/Model-Validation.aspx>

46 CEBS's report on supervisory objectives and powers: [http://www.c-eps.org/getdoc/f7a4d0f8-5147-4aa4-bb5b-28b0e56c1910/CEBS-2009-47-Final-\(Report-on-Supervisory-Powers\)-.aspx](http://www.c-eps.org/getdoc/f7a4d0f8-5147-4aa4-bb5b-28b0e56c1910/CEBS-2009-47-Final-(Report-on-Supervisory-Powers)-.aspx)



The report also highlights considerable differences in the sanctioning powers of supervisory authorities and their related publication policies and practices, although it is difficult to reach conclusions on how this may affect the effectiveness of prudential supervision.

#### NEXT STEPS

The review panel will review in 2009 the functioning of supervisory colleges for a selection of large cross-border banks in Europe.

#### 4.5.2. Mediation mechanism

Mediation is a procedure in which a neutral intermediary – the mediator – endeavours at the request of the parties to a dispute to assist them in reaching a mutually satisfactory, legally non-binding settlement. In the context of CEBS, mediation is a peer mechanism to be used specifically to help resolve supervisory disputes that arise in a cross-border context. The objective is to support the application of existing co-operation tools among supervisors, such as CEBS's Guidelines on validation and on home/host co-operation.

CEBS's mediation mechanism draws on the mediation mechanism developed by CESR, in order to ensure as much cross-sector consistency as possible; CEIOPS is also following the same line. CEBS's mechanism has been tailored to take account of banking and prudential supervision concerns. The basic principles and key features of the mechanism have been publicly consulted on, and the formalised Mediation Protocol<sup>47</sup> was published in the second half of 2007.

#### 4.5.3. Supervisory disclosures

The common supervisory disclosure framework has been implemented since 2007 and is accessible on the Internet, both on CEBS's website<sup>48</sup> and on national websites.<sup>49</sup> At present the common framework includes only disclosures on the capital requirements directive (CRD) – the legislative provisions and also the supervisory application of the rules (e.g. the supervisory review process under Pillar 2, exercise of national discretions) and statistical data on the implementation of the CRD - and disclosures on reporting (COREP/FINREP).

CEBS believes that this web-based framework is the right tool to enhance transparency and effectiveness of supervision, and also to help promoting a level playing field and to contribute significantly to the consistent implementation of the community legislation across the EU. The framework is an important step towards enhanced transparency, which should lead to convergence in supervisory practices through peer and market pressure.

#### NEXT STEPS

The common framework contributes significantly to the consistent implementation of Community legislation across the EU in line with the Council's conclusions on this matter. At present the framework covers only the disclosures required in the CRD (2006/48/EC and 2006/49/EC) and the reporting framework (COREP/FINREP). During 2009, CEBS will be working on the extension of the common framework.

#### 4.5.4. Training and staff exchanges

One of the major objectives of the Lamfalussy process is to develop a common supervisory culture in the EU which would ensure a true level playing field for financial institutions and progressively eliminate differences in the approaches of national supervisory authorities. This can be only achieved if supervisors share a common understanding of the rules and related working procedures. Thus, the European Commission requires the Level-3 Committees to encourage and facilitate this process.

Since its inception, CEBS has actively worked towards meeting these objectives. CEBS has launched many sectoral seminars (in 2008 more than 300 people from CEBS members and observers attended the highly recommended seminars) as part of its general training programme and it encourages its members to participate actively in staff exchanges. This work is also carried out at a cross-sectoral level (see section 4.4.3 of the Annual Report 2008).

As regards staff exchanges, CEBS has been looking into the obstacles (tax issues, social security issues, restrictions of language and adequacy of staff) which impede competent authorities from moving further on them. CEBS has developed a common framework for staff exchanges, setting out the conditions and processes, in an effort to facilitate the administrative procedures and alleviate the burden.

#### NEXT STEPS

In 2009, building on the experience and results of previous years, CEBS will further enhance its training programmes, both on a sectoral and cross-sectoral basis. The training courses are already being used as mechanisms for facilitating the exchange of knowledge and building skills that are necessary to achieve a more integrated supervisory approach amongst members. CEBS will also enhance the link between its products (guidelines, advice, best practice papers) and the training programmes offered to its members, allowing for swifter implementation of CEBS tools in the day-to-day supervision of European institutions.

47 Mediation Protocol between Banking Supervisors: <http://www.c-ebs.org/getdoc/ef0fadd4-f4de-4161-b20e-ab229a1bd0d9/ProtocolonMediation20070925.aspx>

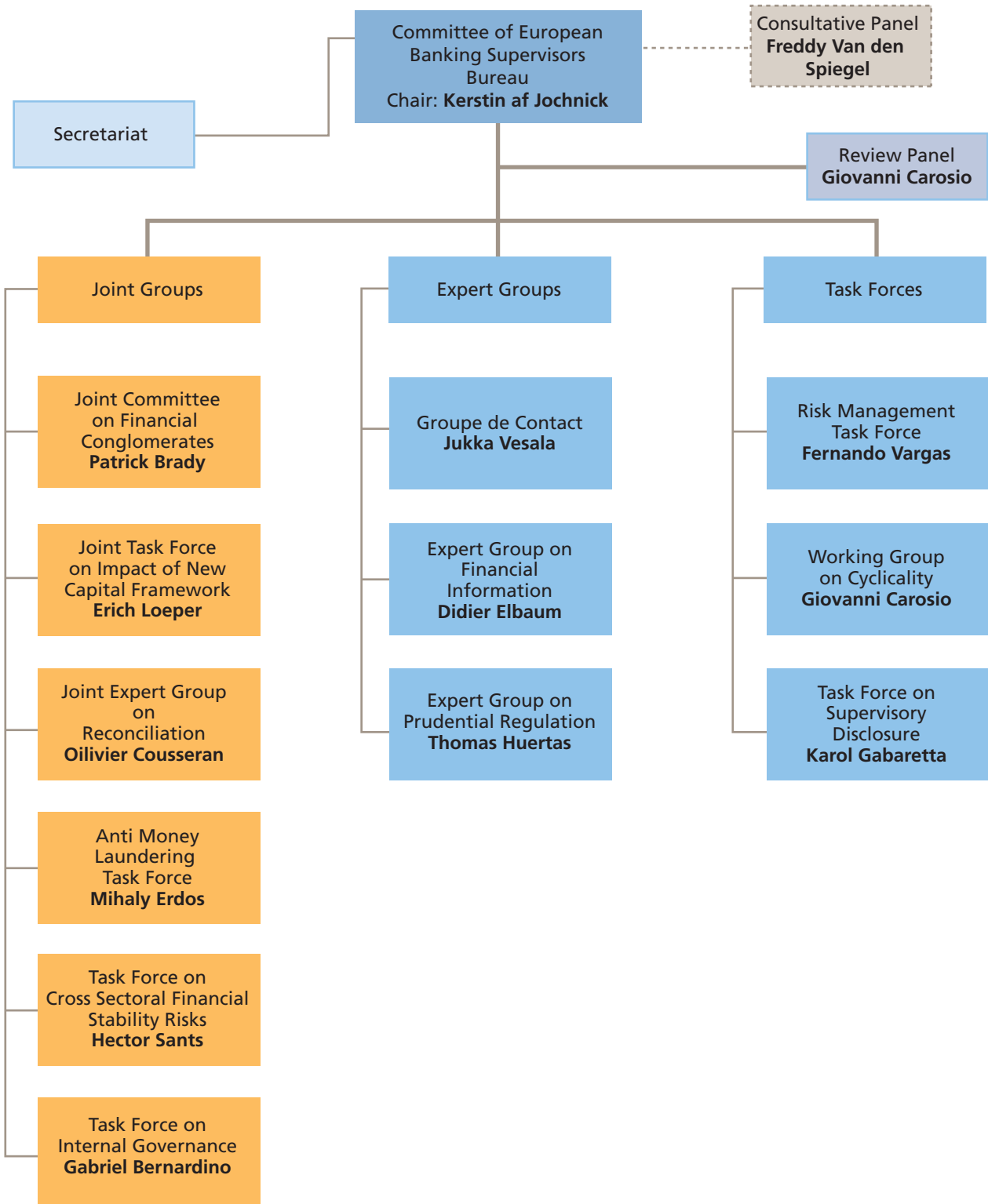
48 <http://www.c-ebs.org/Supervisory-Disclosure.aspx>

49 Article 144 of the CRD requires competent authorities to provide information on their supervisory and regulatory systems and states that the disclosures shall be published in a common format and made accessible in a single electronic location.

# 5. Annexes

## 5.1. OUR ORGANISATION

### 5.1.1. Organisation Chart



## 5.1.2. CEBS MEMBERS AND OBSERVERS

### MEMBERS

Country	Institution	Name
	<b>CEBS's Chair</b>	<b>Mrs. Kerstin af Jochnick</b>
Austria	Finanzmarktaufsicht (Financial Market Authority)	Helmut Ettl
	Oesterreichische Nationalbank (Central Bank of the Republic of Austria)	Andreas Ittner
Belgium	Commission Bancaire, Financiere et des Assurances (Banking, Finance & Insurance Commission)	Rudi Bonte
	Banque Nationale de Belgique (National Bank of Belgium)	Jo Swyngedouw
Bulgaria	Българска народна банка (Bulgarian National Bank)	Rumen Simeonov
Cyprus	Κεντρική Τράπεζα της Κύπρου (Central Bank of Cyprus)	Costas S. Poullis
Czech Republic	Ceska Narodni Banka (Czech National Bank)	David Rozumek
Denmark	Finanstilsynet (Danish Financial Supervisory Authority)	Flemming Nytoft Rasmussen
	Danmarks Nationalbank (National Bank of Denmark)	Jens Lundager
Estonia	Finantsinspektsioon (Financial Supervision Authority)	Andres Kurgpold
	Eesti Pank (Estonian Bank)	Jaak Tors
Finland	Finanssivalvonta (Finnish Financial Supervisory Authority)	Jukka Vesala
	Suomen Pankki (Bank of Finland )	Kimmo Virolainen
France	Banque de France (Bank of France)	Daniele Nouy
		Didier Elbaum
Germany	Bundesanstalt für Finanzdienstleistungsaufsicht (Federal Financial Supervisory Authority)	Thomas Schmitz-Lippert
	Deutsche Bundesbank (Central Bank of the Federal Republic of Germany)	Erich Loeper
Greece	Τράπεζα της Ελλάδος (Bank of Greece)	Panagiotis Kyriakopoulos
Hungary	Pénzügyi Szervezetek Állami Felügyelete (Hungarian Financial Supervisory Authority)	Mihaly Erdos
	Magyar Nemzeti Bank (Central Bank of Hungary)	Julia Kiraly
Ireland	Financial Regulator	Mary Burke
	Central Bank and Financial Services Authority of Ireland	Mark Cassidy
Italy	Banca d'Italia (Bank of Italy)	Giovanni Carosio
Latvia	Finansu un Kapitāla Tirgus Komisija (Financial and Capital Market Commission)	Janis Placis
	Latvijas Banka (Bank of Latvia)	Vita Pilsuma
Lithuania	Lietuvos Bankas (Bank of Lithuania)	Filomena Jaseviciene
Luxembourg	Commission de Surveillance du Secteur Financier (Commission for the Supervision of Financial Sector)	Claude Simon
	Banque Centrale du Luxembourg (Central Bank of Luxembourg)	Norbert Goffinet
Malta	Malta Financial Services Authority	Karol Gabarretta
	Central Bank of Malta	Anthony Cortis
Netherlands	De Nederlandsche Bank (National Bank of Netherlands)	Henk Brouwer
		Thijs van Woerden

Country	Institution	Name
Poland	Komisja Nadzoru Finansowego (Polish Financial Supervision Authority)	Stanislaw Kluza
	Narodowy Bank Polski (National Bank of Poland)	Andrzej Reich
Portugal	Banco de Portugal (Bank of Portugal)	Pedro Duarte Neves Adelaide Cavaleiro
	<b>Banca Națională a României</b> (National Bank of Romania)	Adrian Cosmescu
Slovakia	Narodna Banka Slovenska (National Bank of Slovakia)	Pavel Ferienc
Slovenia	Banka Slovenije (Bank of Slovenia)	Bozo Jasovic
Spain	Banco de España (Bank of Spain)	Jose Maria Roldan Fernando Vargas
	Finansinspektionen (Swedish Financial Supervisory Authority)	Uldis Cerps
Sweden	Sveriges Riksbank (Central Bank of Sweden)	Goran Lind
	Financial Services Authority	Thomas Huertas
UK	Bank of England	Mark Walsh
	European Central Bank	Mauro Grande

### OBSERVERS

Country	Institution	Name
Iceland	Fjármálaeftirlitið (Financial Supervisory Authority)	Jonas Fr. Jonsson
	Seðlabanki Íslands (Central Bank of Iceland)	Jonas Thordarson
Liechtenstein	Finanzmarktaufsicht Liechtenstein (Financial Market Authority)	Rene Melliger
Norway	Kredittilsynet (Financial Supervisory Authority of Norway)	Bjorn Skogstad Aamo
	Norges Bank (Central Bank of Norway)	Sindre Weme
EU	European Commission	Patrick Pearson
	Banking Supervision Committee of the ESCB	Peter Praet

**COMMISSION DECISION  
of 23.1.2009  
establishing the Committee of European Banking  
Supervisors**

Text with EEA relevance

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Whereas:

- (1) As part of the so-called Lamfalussy process, the Commission adopted Decision 2004/5/EC of 5 November 2003 establishing the Committee of European Banking Supervisors<sup>1</sup> (hereinafter "the Committee"). The Committee took up its duties on 1 January 2004, serving as an independent body for reflection, debate and advice of the Commission in the field of banking regulation and supervision.
- (2) Fulfilling the provisions of Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005 amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 92/49/EEC and 93/6/EEC and Directives 94/19/EC, 98/78/EC, 2000/12/EC, 2001/34/EC, 2002/83/EC and 2002/87/EC in order to establish a new organisational structure for financial services committees<sup>2</sup>, the Commission carried out a review of the Lamfalussy process in 2007 and presented its assessment in a Communication of 20 November 2007 entitled "Review of the Lamfalussy process – Strengthening supervisory convergence"<sup>3</sup>.
- (3) In the Communication, the Commission pointed out the importance of the Committee of European Securities Regulators, the Committee of European Banking Supervisors and the Committee of European Insurance and Occupational Pensions Supervisors (hereinafter "the Committees of Supervisors") in an increasingly integrated European financial market. A clear framework for the activities of these Committees in the area of supervisory convergence and cooperation was deemed necessary.
- (4) While reviewing the functioning of the Lamfalussy process, the Council invited the Commission to clarify the role of the Committees of Supervisors and consider all different options to strengthen the working of those Committees, without unbalancing the current institutional structure or reducing the accountability of supervisors<sup>4</sup>.
- (5) At its meeting of 13 and 14 March 2008, the European Council called for swift improvements to the functioning of the Committees of Supervisors<sup>5</sup>.
- (6) On 14 May 2008<sup>6</sup>, the Council invited the Commission to revise the Commission Decisions establishing the Committees of Supervisors so as to ensure coherence and consistency in their mandates and tasks as well as to strengthen their contributions to supervisory cooperation and convergence. The Council noted that specific tasks could be explicitly given to the Committees to foster supervisory cooperation and convergence, and their role in assessing risks to financial stability. Therefore a reinforced legal framework regarding the role and tasks of the Committee in this respect should be provided.
- (7) The composition of the Committee should reflect the organisation of banking supervision and should also take account of the role of central banks as regards the overall stability of the banking sector at national and Community level. The respective rights of the different categories of participants should be clearly identified. In particular, chairmanship and voting rights should be reserved to the competent supervisory authorities of each Member State. Participation in confidential discussions about individual supervised institutions should, where appropriate, be restricted to the competent supervisory authorities and to the central banks entrusted with specific operational responsibilities for supervision of the supervised institutions concerned.
- (8) The Committee should serve as an independent advisory group of the Commission in the field of banking supervision.
- (9) The Committee's mandate should cover the supervision of financial conglomerates. To avoid duplication of work, to prevent any inconsistencies, to keep the Committee abreast of progress, and to give it the opportunity to exchange information, the collaboration with the Committee of European Insurance and Occupational Pensions Supervisors in the supervision of financial conglomerates should be exercised in the Joint Committee on Financial Conglomerates.
- (10) The Committee should also contribute to the common and uniform day-to-day implementation of Community legislation and its consistent application by the supervisory authorities.
- (11) The Committee does not have any regulatory powers at Community level. It should carry out peer reviews, promote best practices and issue non-binding guidelines, recommendations and standards in order to increase convergence across the Community.
- (12) Enhanced bilateral and multilateral supervisory cooperation depends on the mutual understanding and trust between supervisory authorities. The Committee should contribute to the improvement of such cooperation.

1 OJ L 3, 7.1.2004, p. 28.

2 OJ L 79, 24.3.2005, p. 9.

3 COM(2007) 727 final.

4 Council Conclusions 15698/07 of 4 December 2007

5 Council Conclusions 7652/1/08 Rev 1

6 Council Conclusions 8515/3/08 Rev 3

- (13) The Committee should also foster supervisory convergence across the Community. In order to be more specific about this objective, an indicative and open-ended list of tasks to be carried out by the Committee should be established.
- (14) In order to resolve disputes of a cross-border nature between supervisory authorities, in particular within colleges of supervisors, a voluntary and non-binding mediation mechanism should be provided by the Committee.
- (15) To benefit from the expertise acquired by the Committee and without prejudice to the powers of supervisory authorities, the supervisory authorities should be able to refer matters to the Committee with a view to obtaining its non-binding opinion.
- (16) The exchange of information between the supervisory authorities is fundamental to their functions. It is central for the efficient supervision of banking groups and for financial stability. Whilst the banking legislation imposes clear legal obligations on supervisory authorities to cooperate and exchange information, the Committee should facilitate practical day-to-day exchange of information between them, subject to relevant confidentiality provisions set out in the applicable legislation.
- (17) In order to reduce the duplication of supervisory tasks and thereby streamline the supervisory process as well as reduce the burden imposed on banking groups, the Committee should facilitate the delegation of tasks between supervisory authorities, in particular in cases specified in the relevant legislation.
- (18) With a view to fostering convergence and consistency across the colleges of supervisors and thereby ensuring a level playing field, the Committee should monitor their functioning without constraining the independence of the members of the college.
- (19) Quality, comparability and consistency of supervisory reporting are central to the costefficiency of Community supervisory arrangements and the compliance burden on cross border institutions. The Committee should contribute to ensuring that overlap and duplication is eliminated and that the reporting data is comparable and of appropriate quality.
- (20) Financial systems in the Community are closely linked and events in one Member State can have a significant impact on financial institutions and markets in other Member States. The continuing emergence of financial conglomerates and the blurring of distinctions between the activities of firms in the banking, securities and insurance sectors give rise to additional supervisory challenges at national and Community level. In order to safeguard financial stability, a system is needed at the level of the Committee, the Committee of European Securities Regulators and the Committee of European Insurance and Occupational Pensions Supervisors in order to identify potential risks, across borders and across sectors, at an early stage and, where necessary, inform the Commission and the other Committees. Furthermore, it is essential that the Committee ensures that finance ministries and national central banks of the Member States are informed. The Committee has its role to play in this respect by identifying risks in the banking sector and regularly reporting on the outcome to the Commission. The Council should also be informed of these assessments. The Committee should also cooperate with the European Parliament and provide it with periodic information on the situation in the banking sector. The Committee should not, in this context, disclose information on individual supervised entities.
- (21) In order to adequately deal with cross-sector issues, the activities of the Committee should be coordinated with those of the Committee of European Securities Regulators, the Committee of European Insurance and Occupational Pensions Supervisors and the Banking Supervision Committee of the European System of Central Banks. This is of particular importance in addressing possible cross-sectoral risks to financial stability.
- (22) Given the globalisation of financial services and the increased importance of international standards, the Committee should also foster dialogue and cooperation with supervisors outside the Community.
- (23) The accountability of the Committee towards the Community Institutions is of high importance and should be of a well established standard while respecting the independence of supervisors.
- (24) The Committee should draw up its own rules of procedure and fully respect the prerogatives of the institutions and the institutional balance established by the Treaty. The enhanced framework of the activities of the Committee should be accompanied by improved working processes. To this end, if consensus cannot be reached, decisions should be taken by qualified majority corresponding to the rules set out in the Treaty.
- (25) For reasons of legal security and clarity Decision 2004/5/EC should be repealed.

HAS DECIDED AS FOLLOWS:

#### **Article 1**

An independent advisory group on banking supervision in the Community, called "the Committee of European Banking Supervisors" (hereinafter "the Committee"), is hereby established.

#### **Article 2**

The Committee shall advise the Commission, in particular as regards the preparation of draft implementing measures in the field of banking activities and in the field of financial conglomerates, on its own initiative or at the request of the Commission.

Where the Commission requests advice from the Committee, it may lay down a time limit within which the Committee shall provide such advice. Such time limit shall be laid down taking into account the urgency of the matter.

#### **Article 3**

The Committee shall fulfil the tasks assigned to it and contribute to the common and uniform implementation and consistent application of Community legislation by issuing non-binding guidelines, recommendations and standards.

**Article 4**

1. The Committee shall enhance cooperation between national supervisory authorities in the field of banking and foster the convergence of Member States' supervisory practices and approaches throughout the Community. To this effect, it shall carry out, at least, the following tasks:
  - (a) Mediate or facilitate mediation between supervisory authorities in cases specified in the relevant legislation or at the request of a supervisory authority;
  - (b) Provide opinions to supervisory authorities in cases specified in the relevant legislation or at their request;
  - (c) Promote the effective bilateral and multilateral exchange of information between supervisory authorities subject to applicable confidentiality provisions;
  - (d) Facilitate the delegation of tasks between supervisory authorities, in particular by identifying tasks which can be delegated and by promoting best practices;
  - (e) Contribute to ensuring the efficient and consistent functioning of colleges of supervisors in particular through setting guidelines for the operational functioning of colleges, monitoring the coherence of the practices of the different colleges and sharing best practices;
  - (f) Contribute to developing high quality and common supervisory reporting standards;
  - (g) Review the practical application of the non-binding guidelines, recommendations and standards issued by the Committee.
2. The Committee shall review the Member States' supervisory practices and assess their convergence on an ongoing basis. The Committee shall report annually on progress achieved and identify the remaining obstacles.
3. The Committee shall develop new practical convergence tools to promote common supervisory approaches.

**Article 5**

1. The Committee shall monitor and assess developments in the banking sector and, where necessary, inform the Committee of European Securities Regulators, the Committee of European Insurance and Occupational Pensions Supervisors and the Commission. The Committee shall ensure that the finance ministries and national central banks of the Member States are informed about potential or imminent problems.
2. The Committee shall, at least twice a year, provide assessments to the Commission of micro-prudential trends, potential risks and vulnerabilities in the banking sector. The Committee shall include in these assessments a classification of the main risks and vulnerabilities and indicate to what extent such risks and vulnerabilities pose a threat to financial stability and, where necessary, propose preventative or remedial actions. The Council shall be informed of these assessments.

3. The Committee shall have in place procedures enabling the supervisory authorities to react promptly. Where appropriate, the Committee shall facilitate a joint assessment amongst supervisors within the Community on risks and vulnerabilities which may negatively affect the stability of the financial system of the Community.
4. The Committee shall ensure an adequate coverage of cross-sectoral developments, risks and vulnerabilities by closely cooperating with the Committee of European Securities Regulators, the Committee of European Insurance and Occupational Pensions Supervisors and the Banking Supervision Committee of the European System of Central Banks.

**Article 6**

1. The Committee shall contribute to the development of common supervisory practices in the field of banking as well as on a cross-sectoral basis in close cooperation with the Committee of European Securities Regulators and the Committee of European Insurance and Occupational Pensions Supervisors.
2. To this effect, it shall in particular establish sectoral and cross-sectoral training programmes, facilitate personnel exchanges and encourage competent authorities to intensify the use of secondment schemes, joint inspection teams and supervisory visits and other tools.
3. The Committee shall, as appropriate, develop new instruments to promote the common supervisory practices.
4. The Committee shall enhance cooperation with the supervisory authorities of third countries, in particular by their participation in common training programmes.

**Article 7**

1. The Committee shall be composed of high level representatives from the following organisations:
  - (a) the national public authorities competent for the supervision of credit institutions, hereinafter "the competent supervisory authorities";
  - (b) the national central banks entrusted with specific operational responsibilities for the supervision of individual credit institutions alongside a competent supervisory authority;
  - (c) the central banks which are not directly involved in the supervision of individual credit institutions, including the European Central Bank.
2. Each Member State shall designate high level representatives to participate in the meetings of the Committee. The European Central Bank shall designate a high level representative to participate in the Committee.
3. The Commission shall be present at the meetings of the Committee and shall designate a high level representative to participate in its debates.
4. The Committee shall elect a chairperson from among the representatives of the competent supervisory authorities.

5. The Committee may invite experts and observers to attend its meetings.

**Article 8**

The members of the Committee shall be required not to disclose information covered by the obligation of professional secrecy. All participants in the discussions shall be obliged to comply with the applicable rules of professional secrecy. Whenever discussion of an item on the agenda entails the exchange of confidential information concerning a supervised institution, participation in such discussion may be restricted to the competent supervisory authorities directly involved and the national central banks entrusted with specific operational responsibilities for the supervision of the individual credit institutions concerned.

**Article 9**

The Committee shall regularly inform the Commission about the outcome of its activities. It shall have regular contacts with the European Banking Committee established by Commission Decision 2004/10/EC<sup>7</sup> and the competent Committee of the European Parliament.

The Committee shall ensure cross-sectoral consistency of work in the financial services sectors by regular and close cooperation with the Committee of European Securities Regulators and the Committee of European Insurance and Occupational Pensions Supervisors.

The chairperson of the Committee shall meet the chairpersons of the Committee of European Securities Regulators and of the Committee of European Insurance and Occupational Pensions Supervisors at least once a month.

**Article 10**

The Committee may set up working groups. The Commission shall be invited to the meetings of the working groups as an observer.

**Article 11**

The Committee shall cooperate in the area of supervision of financial conglomerates with the Committee of European Insurance and Occupational Pensions Supervisors in a Joint Committee on Financial Conglomerates.

The Commission and the European Central Bank shall be invited to the meetings of the Joint Committee on Financial Conglomerates as observers.

**Article 12**

Before transmitting its opinion to the Commission, the Committee shall, at an early stage, consult market participants, consumers and end-users extensively and in an open and transparent manner. The Committee shall publish the results of the consultations, unless the respondent requests otherwise. When providing advice on provisions applicable to both credit institutions and investment firms, the Committee shall consult all authorities which are competent for the supervision of investment firms and are not already represented in the Committee.

**Article 13**

The Committee shall draw up an annual work programme and transmit it to the Council, the European Parliament and the Commission by the end of October each year. The Committee shall periodically and at least annually inform the Council, the European Parliament and the Commission on the achievement of the activities set out in the work programme.

**Article 14**

The Committee shall work by consensus of its members. If no consensus can be reached, decisions shall be taken by qualified majority. The votes of the representatives of the Members of the Committee shall correspond to the votes of the Member States as laid down in Articles 205 (2) and (4) of the Treaty.

Members of the Committee which do not follow the guidelines, recommendations, standards and other measures agreed by the Committee shall be prepared to present the reasons for this choice.

**Article 15**

The Committee shall adopt its own rules of procedure and organise its own operational arrangements.

With regard to decisions concerning amendments to the rules of procedure and elections to and dismissals from the Board of the Committee, the rules of procedure may foresee decision making procedures that are different from those set out in Article 14.

**Article 16**

Decision 2004/5/EC is repealed.

**Article 17**

The Decision shall take effect on the day of its publication in the Official Journal of the European Union.

Done at Brussels, 23.1.2009

For the Commission

Charlie McCREEVY  
Member of the Commission



## 5.1.4. CHARTER OF THE COMMITTEE OF EUROPEAN BANKING SUPERVISORS

Having regard to:

- 1) The mandate given by the ECOFIN Council to the Economic and Financial Committee to work on EU financial stability, supervision and integration (7 May 2002);
- 2) The reports of the Economic and Financial Committee on financial regulation, supervision and stability of 9 October 2002 and 28 November 2002;
- 3) The conclusions of the Ecofin Council of 8 October 2002 and 3 December 2002;
- 4) The Report of the Committee on Economic and Monetary Affairs of the European Parliament and the Resolution of the European Parliament on prudential supervision in the European Union (6 November 2002 and 21 November 2002);
- 5) The Commission decision of 5 November 2003 establishing the Committee of European Banking Supervisors (2004/5/EC);
- 6) The Directive 2006/29/EC amending European Parliament and Council Directive 2000/12/EC, Council Directive 91/675/EEC (as last amended by Directive 2008/21/EC), Council Directive 85/611/EEC (as last amended by European Parliament and Council Directives 2001/107/EC, 2001/108/EC and 2008/18/EC), Directive 2002/87/EC (as amended by Directive 2008/25/EC), Directive 2002/83/EC (as amended by Directive 2008/19/EC), Directive 73/239/EEC (as amended by Directive 90/618/EEC), Directive 93/6/EEC, Directive 94/19/EC and establishing a new financial services committee organisational structure;

**considering** that the growth of efficient, competitive and sound banking markets, at the national, European and international levels, is necessary for the proper allocation of resources and the cost-effective financing of the economies of the Member States of the EEA;

**considering** the freedom of establishment and the freedom to provide financial services within the EEA;

**considering** the necessity to eliminate obstructive differences between the laws of the Member States, to make it easier to take up and pursue the business of credit institutions;

**considering** that the protection of savings and the creation of equal conditions of competition are fundamental to achieving and maintaining sound and stable financial markets;

**considering** that close co-operation as well as information exchange between regulatory authorities are essential for the successful supervision of the European banking sector and that synergies between banking supervision and central bank oversight should be taken into account;

**considering** that apart from the central banks, Ministries of Finance should be taken into account in the context of the Memorandum of Understanding between the financial

supervisors, central banks and the Ministries of Finance of the European Union on cross-border financial stability;

**having regard to** the importance of greater supervisory and regulatory convergence and a common supervisory culture for the achievement of an integrated banking market in Europe;

**having regard to** the benefits of co-operation with other sectoral regulatory networks;

**having regard to** the need to base all its actions around a common conceptual framework of overarching principles for the regulation of the European banking market;

**having regard to** the importance of involving all market participants in the regulatory process and to work in an open and transparent manner;

**considering** that the role of the Committee of the European Banking Supervisors is to:

- (i) advise the Commission either at the Commissions request or on the Committees own initiative, in particular for the preparation of draft implementing measures in the field of banking activities;
- (ii) contribute to a consistent implementation of EU directives and to the convergence of Member States supervisory practises across the European Union;
- (iii) promote supervisory co-operation, including through the exchange of information;

the members of the Committee resolve to adhere, both in principle and in practice, to this Charter and to the following provisions:

### Article 1 - Members of the Committee

1.1 Each Member State of the European Union will designate a senior representative from the national competent supervisory authority in the banking field to participate in the meetings of the Committee. This representative will be the voting member. In addition, each Member State will designate as a non-voting member a senior representative of the national central bank when the national central bank is not the competent authority. In the case that the national central bank is the competent authority, the Member State may designate a second representative from this institution. The European Central Bank will also designate a senior representative as a non-voting member.

1.2 Applying the same rules as in 1.1, the competent supervisory authorities in the banking field from countries of the European Economic Area, which are not members of the European Union, will designate senior representatives to participate in the meetings as observers. These observers will fully participate in the meetings without, however, participating in decision making.

- 1.3 Upon signing of the Accession Treaty, observership will be granted to the acceding countries, until they become members of the European Union.
- 1.4 The European Commission as well as the Chairs of the Banking Supervision Committee of the ESCB (BSC) and of the Groupe de Contact (GdC) will also have observer status in the meetings. Where a common interest to work together appears, the Committee may accept additional observers to participate in meetings.
- 1.5 The members of the Committee should keep the national members of the European Banking Committee informed about its discussions and, where necessary, make all appropriate national arrangements to be in a position to speak for all competent national authorities that have an interest in the discussed matter.
- 1.6 Where relevant to its work, the Committee may invite external experts.

#### Article 2 - Chair

- 2.1 The Committee will be chaired, in a personal capacity, by a voting member. The Chair will be chosen by consensus or if consensus cannot be achieved elected with a majority of two thirds of the voting members for a period of two years. In this respect, the voting members should seek to represent the common view of voting and non-voting members of the Member State. For the duration of the Chairmanship period, the relevant supervisory authority will nominate an additional member as representative.

To assist the Chair, the Committee will also elect a Vice Chair among its voting members following the same procedure used to elect the Chair. The Vice Chair may replace and represent the Chair in case of absence or impediment.

- 2.2 The Chair organises and chairs the meeting of the Committee and executes all other functions delegated to the Chair by the Committee. The Chair is responsible for public relations and the representation of the Committee externally. The Chair is also responsible for the supervision of the Secretariat. After consultation with the Vice Chair, the Chair decides on the agenda of the meetings. The Chair may delegate some of its functions to the Vice Chair.
- 2.3 In addition to the Chair and Vice Chair and also for a period of two years, the Committee may elect up to four members to form the Bureau. These members shall reflect the composition of the Committee. The role of the Bureau is to advise and assist the Chair, e.g. in the preparation of meetings and in its administrative functions and to monitor the budget in close co-operation with the Chair and the Vice Chair.

#### Article 3 - Operational links with the European Commission

- 3.1 The representative of the European Commission will be entitled to participate actively in all debates, except when the Committee discusses confidential matters.

- 3.2 Representatives from the European Commission will be invited to participate actively in meetings of Expert Groups, under the same conditions as in Article 3.1.

#### Article 4 - Tasks

- 4.1 The Committee will advise the European Commission on banking policy issues, in particular in the preparation of draft measures for the implementation of European legislation (defined as level 2 measures in the Lamfalussy Report). The Committee may provide this advice either at the European Commissions request or on its own initiative.
- 4.2 The Committee will respond within a time-limit, which the Commission may lay down according to the urgency of the matter, to the mandates given by the European Commission in respect of the preparation of implementing measures.
- 4.3 The Committee will foster and review common and uniform day to day implementation and consistent application of Community legislation. It may issue guidelines, recommendations and standards, relating to this and to other matters, that the members will introduce in their regulatory/supervisory practices on a voluntary basis. It may also conduct surveys of regulatory/supervisory practices within the single market. In addition, it may assess the degree of convergence reached by its members in the implementation of a given supervisory provision or practise, relying on self assessments conducted by its members and on independent reviews conducted by its Review Panel. Convergence will also be facilitated through the provision of a mediation mechanism.
- 4.4 The Committee will develop effective operational network mechanisms (including network mechanisms to promote the consistent functioning of colleges of supervisors) to facilitate the exchange of information in normal times and at times of stress and to enhance day-to-day consistent supervision and enforcement in the Single banking Market.
- 4.5 The Committee will observe and assess the evolution of banking markets and the global tendencies in banking regulation in respect of their impact on the regulation of the Single Market for financial services. It will also assess, from a supervisory perspective, the developments, risks and vulnerabilities in the EU banking sector that could affect the stability of EU markets and report to the competent European committees. In this respect, the Committee will particularly co-operate with the BSC.
- 4.6 The Committee will provide a platform for an exchange of supervisory information, in order to facilitate the performance of members tasks, subject to the relevant confidentiality provisions stated in the EU legislation. In exceptional circumstances and at the explicit request of an individual member, those members, who represent the competent supervisory authority and further institutions which have a material operational and practical involvement in banking supervision (in principle, the institutions represented in the Groupe de

Contact), may meet in restricted session in order to discuss strictly confidential micro-prudential matters, without prejudice to existing agreements for exchange of information. Banking supervisors of EEA member countries who are observers of the CEBS may also join a restricted session.

- 4.7 The Committee will seek to enhance cross-sectoral convergence through co-operation with CESR, CEIOPS and any other level 3 committee which will be established in the financial sector.
- 4.8 The Committee will foster a common supervisory culture amongst its members.

#### **Article 5 - Working procedures**

- 5.1 The Committee will meet at least three times a year. Additional meetings may be convened if and when appropriate.
- 5.2 All decisions will be taken by the members of the Committee which may delegate decisions to the Chair.
- 5.3 In its working and/or deliberation and/or decisions, the Committee will respect the national and EU legislation regarding secrecy and confidentiality.
- 5.4 The Committee will rely predominantly on the Groupe de Contact, which will be its main expert group and which will report to it. The Committee will endorse the Charter of the Groupe de Contact and its work programme.
- 5.5 In addition, the Committee established permanent expert groups, chaired by a committee member (or under the members supervision), working within specific terms of reference as well as a Review Panel, as referred to in 4.3. Also task-forces may be established with a given mandate and to be disbanded upon completion of the mandated work. The composition of such groups should be flexible in order to involve other relevant authorities where necessary.
- 5.6 The Committee will aim to work by consensus of its members. For the execution of its tasks as set out in Article 4 above, if no consensus can be reached, decisions will be taken by qualified majority, whereby each Member country has the same number of voting rights as in the Council as stated in the Nice Treaty<sup>50</sup>. When a decision is taken by qualified majority, the Committee should identify and elaborate the opinion of individual members. With this aim, the different opinions of the members should be recorded.
- 5.7 Levels 3 measures (e.g. guidelines, recommendations and standards) taken either by consensus or by qualified majority are not legally binding. Members may not apply a measure a) for reasons of incompatibility of a measure with their national law or lack of competence due to legal impediments or b) in the case of a measure for which they expect vital political or technical impediments to exist or c) where the objectives of the measure are met through other means, or where the measures would be disproportionate in the context of the local market. Members that do not intend to apply the measure in such

a case will state their reasons in full, clarifying in detail the legal, political or technical impediment. This statement will be made public, for example by attaching it to the approved document and will be included in the Level 3 reports to the EU institutions. Moreover, the Committee may invite that member to endeavour to adapt accordingly its legal or regulatory framework and report on progress, if possible.

- 5.8 The Committee will ensure that in undertaking its work, it acts in conformity with the conceptual framework of overarching principles identified in the Ecofin Council Conclusions of 2002 and the Commission Decision establishing the Committee.
- 5.9 The Committee will publish its annual work programme. Generally, the Committee may publish a summary of the non-confidential results of its meetings.
- 5.10 The Committee will use the appropriate processes to consult (both ex-ante and ex-post) market participants, consumers and end users which may include inter alia: concept releases, consultative papers, public hearings and roundtables, written and Internet consultations, public disclosure and summary of comments, national and/or European focused consultations. The Committee will make a public statement of its consultation practices and may establish a market participants consultative panel.

#### **Article 6 - Accountability and institutional links**

- 6.1 The Committee will transmit to the European Parliament, the Council and the European Commission its draft work programme. Subsequently, the Committee will report on an annual basis on the progress achieved on this programme. In addition, the Committee will submit an Annual Report to the European Commission which will also be sent to the European Parliament and the Council.
- 6.2 The Chair of the Committee will report periodically to the European Parliament and/or when requested by the Council, and shall maintain strong links with the European Banking Committee.
- 6.3 The Chair of the Committee may participate as an observer in the meetings of other committees and groups, both at the European as well as at the international level, on request and when relevant for the work of the Committee. On behalf of the Committee, the Chair may address these committees with matters of common interest. The Chairs of the respective committees may also be invited to participate as observers in the Committee.
- 6.4 The Chair of the Committee shall aim to ensure adequate co-operation, e.g. by holding periodical meetings with the Chairs of the BSC, the CESR, the CEIOPS and of any other level 3 committee which will be established to discuss cross-sectoral issues of common interest.
- 6.5 The Committee will foster the dialogue and co-operation with authorities of third countries.

<sup>50</sup> The votes of the members of the CEBS shall be weighted in accordance with Article 205(2) of the Treaty establishing the European Community. For their adoption, decisions shall require at least 255 votes in favour, cast by at least two-thirds of the Member States. When a decision is to be adopted by CEBS by a qualified majority, a member may request verification that the Member States constituting the qualified majority represent at least 62 % of the total population of the Union. If that condition is shown not to have been met, the decision in question shall not be adopted.

**Article 7 - Secretariat**

- 7.1 The Secretary General shall be appointed by the Committee after being proposed by the Chair for a period of three years. The Chair shall propose the Secretary General after consultation with the Vice-Chair and the Bureau. This contract is renewable. Other permanent or seconded staff are appointed on a personal basis by the Chairman after consulting with the Vice Chair and the Secretary General.
- 7.2 In general, the seconded staff of the Secretariat will be provided by the voting members of the Committee; it will work under the responsibility of the Chair in close co-operation with the Vice-Chair. The Secretariat shall prepare and maintain the minutes of the meetings, assist the Committee and the expert groups in their functions and, finally, execute all other functions assigned to it by the Committee or the Chair.
- 7.3 The Secretariat will act as a co-ordinator for all consultations and assist the Chair and the Vice Chair in their public relations activities and representation functions; it will also coordinate the co-operation with the European Commission and other Level 3-committees.

**Article 8 - Budget**

- 8.1 The Committee will function with an annual budget. The Chair shall present, after consultation with the Vice-Chair and the Bureau, a proposal for this budget to the Committee no later than at the last meeting of the year preceding the budget year; the proposal has to be adopted by 31 December at the latest.
- 8.2 The members of the Committee and the observers mentioned in Article 1.2 will contribute annually to the budget. An internal rule will fix the amount of the annual individual contribution of each represented country, and the modalities of the payment. These contributions will be based on the number of votes held by the respective jurisdiction in Council meetings. If the country is not represented in the Council, contributions will be agreed on a proportional basis.
- 8.3 The Committee may receive external contributions or financing for specific projects, notably by the European institutions.

**Article 9 Final provisions**

- 9.1 This Charter will take effect on 10 July 2008.
- 9.2 The Charter may be amended by consensus.
- 9.3 The Committee may adopt further rules to facilitate its functioning.

## 5.2. OUR PROCESS

### 5.2.1. Consultative Panel and Industry Expert Groups

Both CEBS's charter and the Commission's decision establishing the Committee require appropriate processes to be in place to consult extensively in an open and transparent manner with market participants, consumers and end users through consultative papers, public hearings, roundtables etc. In this context, the Committee established a market participants' Panel. The Panel, which acts as "sounding board" for CEBS, was established to assist CEBS in performance of its functions and, in particular, to ensure that the consultation process functions effectively. The Panel is comprised of a limited number of high level individuals who have significant experience in the field of banking, share the objectives of the European Union and are in a position to speak independently and authoritatively. In 2008, the Panel produced a paper entitled "Lessons learned from the Financial Markets crisis" presenting the industry's perspectives on the lessons learned and calling for improvements in the areas of risk management,

stress testing, liquidity risk management, credit rating agencies, transparency and valuation. The outcome of the discussions held between the Panel and CEBS has been used as an input to CEBS's work and for prioritising its activities in 2008. In an effort to cover the different areas of CEBS's work programme and its longer term priorities and to ensure technical dialogue as well as a structured and streamlined approach, five industry expert groups have been in place in 2008; the areas covered are liquidity risk management, national discretions, reporting, valuation and recognition of illiquid assets, and Pillar 3. At the beginning of 2009 another group has been set up, the industry expert group on large exposures. In April 2008, CEBS published the second part of its advice on the review of the large exposures regime, indicating that further guidance should be developed on a number of issues to harmonize further the implementation of the revised regime. Once again, input from the industry is regarded as essential so as to identify possible problems and to discuss solutions between the industry and the supervisors.

#### Members of the Panel:

<b>Freddy Van den Spiegel – Chair</b>	Fortis
<b>Andrew Cross</b>	Credit-Suisse
<b>Bertrand de Saint Mars</b>	Association Française des Entreprises d'investissement
<b>Christian Lajoie</b>	BNP Paribas
<b>Davide Alfonsi</b>	Intesa SanPaolo
<b>Demetrios Lefakis</b>	National Bank of Greece
<b>Herbert Pichler</b>	Austrian Federal Economic Chamber
<b>Hugo Banziger</b>	Deutsche Bank
<b>João Salgueiro,</b>	Portuguese Banking Association
<b>José Maria Méndez</b>	Spanish Federation of Savings Banks
<b>Klaus Willerslev-Olsen</b>	Danish Bankers Association
<b>Manfred Westphal</b>	European Consumers' Organisation (BEUC)
<b>Mariusz Zygierewicz</b>	Polish Banking Association
<b>Michael Kemmer</b>	European Banking Industry Committee (BayernLB)
<b>Michel Bilger</b>	European Banking Industry Committee (Credit Agricole S.A.)
<b>Mick McAteer</b>	Forum of Users of Financial Services (FIN-USE)
<b>Nils-Fredrik Nyblaeus</b>	Skandinaviska Enskilda Banken (SEB)
<b>Peter Knutsson</b>	Forum of Users of Financial Services (FIN-USE)
<b>Richard Desmond</b>	Dunbar Bank (Union of Industrial and Employers' Confederations, UNICE)
<b>Siegfried Jaschinski</b>	State Bank of Baden-Württemberg
<b>Stephen Sanders,</b>	Royal Bank of Scotland

#### Observers of the Panel:

<b>Nicolas Jeanmart</b>	European Savings Banks Group (ESBG)
<b>Volker Heegemann</b>	European Association of Cooperative Banks (EACB)
<b>Walburga Hemetsberger</b>	European Association of Public Banks (EAPB)
<b>Wilfred Wilms,</b>	European Banking Federation (FBE)

### 5.2.2. Impact assessment guidelines and due process (amendment of consultation practices by CEBS)

Decisions about regulatory policy and practice should be based on sound analysis. Impact assessment (IA hereafter) is a key tool in this regard. IA draws on economics and other social sciences to provide an analytical framework that ensures that policy proposals are justified in terms of a proper understanding of the nature of perceived problems. As a disciplined approach it helps to identify past or likely future effects of regulation and supervision on markets and, ensuring engagement with all affected parties, helps policy makers and stakeholders alike develop an appreciation of the respective (dis)advantages of previous policy responses and proposed policy options. In this way, it provides new information that can help policy makers to describe and explain the decision-making process and thereby improve the way in which the most effective policies are identified, chosen and implemented. Moreover, through its formal and informal consultation procedures, IA makes regulatory policy more transparent and thus can help to make the EU's Lamfalussy Level-3 Committees more accountable. It is also a means of communication between the Committees, the different national regulators involved, the regulated firms and other affected or interested parties.

There is increasing recognition of the value of IA at EU level. For example, in an inter-institutional agreement of December 2003, the European institutions adopted the principle of better regulation for their legislative practice. In addition, the White Paper on financial services published at the beginning of 2006 mentions explicitly that IA will accompany any new Commission proposal<sup>2</sup>.

Therefore, preparing an IA corresponds to good EU policy practice and is in line with the wider efforts made to develop better regulation. It is against this background that the L3 Committees adopted Principles on Impact Assessment in late 2006. It was decided to develop more guidance for policymakers from this base. The 3L3 IA Guidelines published in April 2008 are the outcome of this project. They involved co-ordination amongst the EU Level 3 Committees and their content is designed for application to all financial regulatory and supervisory policy and practice.

### Limits of IA

Within the EU policy making process, the main advantage of IA to the work which falls within the remit of the L3 Committees is the submission of policymaking to a systematic and structured approach, providing a credible evidential basis for the advice and proposals of these committees and therefore giving this work much more weight. The outcome of an IA is, however, not a substitute for decision making; it is merely a tool to assist decision makers. Therefore, the L3 Committees will give the results of IA exercises due consideration, but they will not be bound in their decisions by the outcome of an IA. In other words, IA - as a disciplined approach to policy making - will help inform the policymaking process, but not become a substitute for it. Nevertheless, there is an understanding that any decision that deviates markedly from the findings of an IA exercise would require an explanation.

### Use of IA by L3 Committees

Future work by the L3 Committees will mainly concern Level 3 and IA will have an important role to play in helping to clarify policy positions relating to supervisory convergence. However, IA will also be used at Level 2 in at least two cases: when there is a review of Level 2 policies - this would correspond to an ex-post IA; and when the EU Commission seeks further or additional Level 2 advice by a L3 Committee - the volume of this type of work would increase again should the Commission introduce another FSAP, for example. The IA could also be used at Level 1 or high level policy mandates given by the Commission to one of the Committees.



### **Proportionality and flexibility: Screening IAs and Full IAs**

An IA needs to be proportionate to the significance, complexity and uncertainties of the problem or problems to be solved. Otherwise, it risks consuming scarce resources inefficiently or being insufficiently robust. Both would be counter-productive. The principle of proportionality will allow the L3 Committees to keep the detail of IAs within reasonable limits. The principle of proportionality is also central to the European Commission's guidelines on IA. For example, the measures analysed through an IA at level 3 are likely to have significant structural and cost implications for consumers/investors and/or market participants. This can be considered a precondition for the need to carry out an IA. But when there is a reasonable presumption that the impact will be insignificant there is no need for an IA. The time available for policy work by L3 Committees is usually very tight both for Level 2 and Level 3 work. Given these time constraints, the L3 Committees should commit to the use of Screening IAs, i.e. "light versions" of IA. These primarily qualitative exercises could be carried out before a mandate for a particular problem is formulated by the Committee Chairs in order to help ascertain the appropriate scale of the analysis to be pursued after the mandate is issued. In any event, the use of Screening IAs is intended to simplify matters and avoid procedural over-complication so their role and use must be clearly circumscribed.

In August 2008, CEBS published amendments to its Public Statement of Consultation Practices which specifies the procedures to be followed in cases of limited or drafting amendments to CEBS's Guidelines, Standards and Recommendations. The revised Public Statement of Consultation Practices emphasizes the use of the impact assessment methodology in the amendments to the CEBS's Guidelines, Standards and Recommendations. This amendment to the consultation practices limits the number of changes to each Guideline, Standard and Recommendation to one per year as a maximum. This decision was taken in order to promote the stability in the CEBS's products for credit institutions and investment firms.

### 5.2.3. 3L3 revised Protocol

#### Joint Protocol on Cooperation between CESR, CEBS and CEIOPS

The Committee of European Securities Regulators, the Committee of European Banking Supervisors and the Committee of European Insurance and Occupational Pensions Supervisors agree the following regarding their cooperation and coordination in the areas of regulation, policy, information exchange and other tasks with a common interest

In November 2005 when signing the initial 3L3 Joint protocol it was noted that the cooperation between the Level 3 Committees has increasingly become a subject of interest, both within CESR, CEBS and CEIOPS and externally. On various subjects, it has been pointed out by involved European and domestic institutions and by the industry that the work done in one sector should be consistent with the work done in the other financial sectors on Level 1, 2 and 3 as well as in relation to work which lies outside the structure of Lamfalussy. Subjects of common interest exist in many aspects of the work undertaken by the Committees. This remains the case in 2008, when the Committees have agreed to revise the joint 3L3 Protocol in order to reflect both the operational changes that have occurred in the last three years, and the new direction given to the level 3 Committees in the Council conclusions of December 2007.

The Committees agree, where necessary and relevant, to identify subjects of common interest or where common action can create added value. The results of this work should be consistent and/or take into account the effect in other sectors of such work, without implying that the results need to be identical. Differences would, however, need to be explained by the differences in objectives or underlying conditions and the necessity of prioritizing. The following objectives with common interest to all three Level 3 Committees have been identified:

- a. Exchange of experiences which can facilitate supervisors' ability to cooperate;
- b. Sharing information in order to have compatible approaches;
- c. Producing joint work or reports to relevant EU committees and groups; particularly Financial stability assessment;
- d. Reducing supervisory burdens and streamlining processes;
- e. Having similar basic functioning of the three Committees;
- f. Crisis management coordination;

- g. Impact assessment application and implementation;
- h. Supervisory convergence and particularly 3L3 Training.

The responsibility for good cooperation lies with the respective memberships. The Chairs have the responsibility to facilitate such cooperation, assisted in this effort by the Secretariats. Based on existing cooperation experiences between the Chairs and the Secretariats, the Committees have agreed the following practical working arrangements:

#### Article 1 Rotation of Coordination

Each Committee will facilitate the coordination of the 3L3 work for a period of 6 months, divided in the first and second half of the calendar year.

#### Article 2 Meetings and contacts

- a. The Chairs of the 3L3 Committees will meet at least four times a year, to discuss issues of joint interest, and the priorities and progress of issues in each of the Committees. The Chair of the Interim Working Committee on Financial Conglomerates will be invited to attend. The Chair from the corresponding "coordinating" Committee should chair these meetings. The Secretary Generals will participate in these meetings together with the relevant supporting secretariat staff. The 3L3 Chairs will in addition usually meet prior to the meetings of FSC, EFC, ECON and other EU institutions and external speaking events where they are expected to be present together.
- b. The Secretary Generals and representatives of each Secretariat will meet at least four times per year, prior to the 3L3 Chairs meetings, to discuss practical work in progress and provide information which might be of interest to the other Committees.
- c. In addition to the above, the Secretariats should establish a general contact point between them, and will create specific contact points if and when needed on specific subjects.
- d. 3L3 Chairs, Secretary Generals and secretariats will in addition hold telephone conferences, at least once a month, and whenever necessary and appropriate.

#### Article 3 Tasks of the Coordinating Committee

- a. In order to ensure an efficient approach to 3L3 work and decision making each Level 3 Committee should lead, drive and take responsibility for the coordination of 3L3 work, and the tasks involved to support it, on a rotation basis for a six month period.



- b. The Coordinating Committee will be responsible for arranging the 3L3 meetings at every level, including responsibility to ensure appropriate follow up on any agreed outcome. Meetings can take place using telephone conference facilities when necessary and appropriate.
- c. Normally, the Coordinating Committee will serve as a single contact point for the memberships and the EU institutions regarding 3L3 issues. This includes the tasks of (e.g.): coordinating the views of the memberships, notwithstanding direct input from members through each Committee, in relation to 3L3 documents on behalf of the three Committees; planning submissions; taking a view on the progress of all 3L3 work and raising issues that need to be addressed at a 3L3 chairs level.
- d. Specific tasks for the respective persons of the Coordinating Committee:
  1. The Chair will call and chair 3L3 Chairs' meetings during the course of the respective term, and a priori speak on behalf of the three Committees on 3L3 issues, e.g. in FSC and EFC, where appropriate.
  2. The Secretary General will monitor the progress of the day-to day 3L3 work in respect to the 3L3 work programme; chair 3L3 secretariat meetings and sign off on agendas and summary of conclusions.
  3. The Secretariat contact person(s) will provide the central contact point of the secretariats for all 3L3 work, support the Committees in performing their day-to-day 3L3 work; produce 3L3 annual reports; provide overview of progress and prepare 3L3 meetings, agendas and summary of conclusions.
  4. The administrative support will provide logistics for meetings, dates and locations; distribute e-mails and documents to relevant groups of members; keep updated contact lists for the 3L3 organisation.

#### **Article 4 Joint work**

- a. The Committees may decide to conduct joint work on their own initiative, or when receiving mandates on similar subjects, provided that the timelines are compatible. This work may also include the creation of joint working groups involving representatives with the appropriate expertise, if and where necessary. One Secretariat may be appointed as a 'lead' Secretariat for a particular work stream, meaning that it will be asked to draft the proposals, invite and process the comments and input from the other Committees' structures. The joint work would be based on a mandate from the relevant

Committees. The decision on approval of the final product will remain within the remit of each Committee itself.

- b. On cross sector risks there will be joint reporting to the various interested European institutions and/or committees.

#### **Article 5 Work in relation to the EU institutions**

- a. The Committees will coordinate their reporting to the EU institutions and committees.
- b. The secretariats will exchange their respective briefings before appearing in meetings of EU committees.
- c. Comment letters and similar documents to the EU institutions will be prepared by the Coordinating Committee, and sent to the Committees for comments. The 3L3 Chairs will decide on the final contents before submitting the letter/document.

#### **Article 6 Reporting to the Committees**

The respective Committees will be briefed regularly, at least quarterly, on the ongoing contacts and relevant work, including such joint working groups, under these arrangements. The Committees will be notified of forthcoming meetings and agendas of the Chairs of the 3L3 Committees and have the opportunity to propose items for the agenda. The conclusions of the meetings referred to in Article 2 will be distributed to the Committees. The documents produced by joint working groups under Article 4 will be appropriately distributed by each Committee.

#### **Article 7 Work programme and Annual reports**

- a. A joint work programme for the Committees will be prepared each year, and sent to the EU institutions together with the annual work programme of each Committee. The joint work programme will be approved by the Committees and published. The Chairs will monitor the progress achieved and report periodically to the respective Committees.
- b. The Committees will discuss annually the implementation and results of this cooperation and will publish their conclusions in their respective annual reports.

#### **Article 8 Access and exchange of information**

- a. For the purpose of access to and distribution of papers each Secretariat will have access to the documents for the plenary meetings, the minutes thereof and the documents for written procedures of CEBS, CESR and CEIOPS, except for strictly confidential information restricted to the involved competent authorities. This will also facilitate the identification of common interests and areas where a joint approach on (public) accountability is necessary.

- b. In areas in which cross-sector interests have been identified, working documents discussed at the level of expert groups/working groups will also be accessible to the other Secretariats at an early stage.

#### Article 9 Application for EU funding for 3L3 purposes

- a. The 3L3 Chairs will decide, after consulting members, on common 3L3 funding applications for 3L3 Training, after receiving funding proposals prepared by the 3L3 Training Task Force.

#### 9.1 The financing proposals

- b. Each Committee draws up sector specific annual proposals for obtaining subsidies from the EU Commission on the basis of specific proposals and relevant justification. These proposals may be composed of several lines, among which Training, IT projects and other developments are mentioned separately. These proposals will be put together in a single 3L3 format and submitted to the EU Commission.

#### 9.2 Financing of Training

##### *i. Cross-sector training*

- c. Each Committee will, after consulting its members, propose the subjects on which it intends to organise training for the account of the three Committees, at the latest by December for the following year. The subjects for common training will be agreed by the 3L3 Chairs[0]. The cross-sectoral training plan will be implemented by the 3L3 Training Task Force. It will draw up a budget per training course, on the basis of the number of likely participants of the three Committees, and in a later stage of participants of supervisory institutions of non-member states.
- d. Cross-sector training will be run either by i) one of the Committees, ii) externally, or iii) by a member of a Committee, in which case, reasonable costs of that member will be reimbursed out of the funds available for cross-sector training.

##### *ii. Sector training*

- e. Issues for sector training to be organised will be communicated between the Committees. Each Committee's secretariat, or their members, may express interest to participate in one or more subjects on which the other Committee propose to organise training, respecting that the sector committee's members may take priority for places.

- f. The Committees should indicate how many persons they intend to send to each other's proposed sector training programmes, in which case the Committees commit to pay for these persons' participation.
- g. The price of participation will be based on exact cost calculation of the organising Committee (without mark-ups). Each Committee finances its participation in the sector training according to its own rules, with a cost based fee, if any, from participants that are member of that Committee.
- h. The organising Committee set the price for participation in the training it is organising. Verification and payment of fees can be made ex post, on the basis of the costs incurred for the organiser. There may be VAT due on these fees. Each Committee will be accountable to the EU Commission services for the expenditures made in relation to training.

##### *iii. Payments*

- i. The payments for sector projects will be made to the Committee that has proposed the approved project.
- j. The payments for the cross sector training will be transmitted to each of the three Committees for one third each. The Committees will earmark these sums for cross-sector training.

#### Article 10 Miscellaneous

- a. Each Committee will bear its own costs.
- b. The Committees may decide to host joint seminars on cross sector issues.
- c. These arrangements will be effective as of the date of execution. They will be published on the websites of all three Committees.

As agreed and signed in Brussels on 8 December 2008,  
For the Committee of European Securities Regulators:



Eddy Wymeersch (Chair)

For the Committee of European Banking Supervisors:



Kerstin af Jochnick (Chair)

For the Committee of European Insurance and  
Occupational Pensions Supervisors:



Thomas Steffen (Chair)

### 5.3. Consultation and Transparency on Guidelines

Number	Final title of Guidelines or Consultation Papers	End of Public Consultation	Consultation Period	Date of current document
CP01 (and CP01 revised)	Public statement of consultation practices	1st consultation 31 July 2004	3 months	29 April 2004
		2nd consultation 19 June 2007	3 months	
CP02 (and CP02 revised)	Guidelines on outsourcing	1st consultation 31 July 2004	3 months	14 December 2006
		2nd consultation 6 July 2006	3 months	
CP03 (and CP03 revised)	Guidelines in Application of the Supervisory Review Process under Pillar 2	1st consultation 31 August 2004	3 months	25 January 2006
		2nd consultation 21 October 2005	4 months	
CP04 (and CP04 revised)	Guidelines on Common reporting (COREP)	1st consultation 30 April 2005	3 months	16 October 2006
		2nd consultation 19 December 2007	4 months	
CP05	Supervisory Disclosure	24 June 2005	3 months	1 November 2005
CP06 (and CP06 revised)	Financial Reporting Framework (FINREP)	8 July 2005	3 months	15 December 2006 24 July 2007
CP07	External Credit Assessment Institutions (ECAI) Recognition	30 September 2005	3 months	20 January 2006
CP08	The role and tasks of CEBS	28 October 2005	3 months	28 October 2005
CP09	Cooperation between consolidation and host supervisors	8 November 2005	4 months	25 January 2006
CP10 (and CP10 revised)	Model Validation and Approval	30 October 2005	3.5 months	4 April 2006
CP11 (a and b)	a) Concentration Risk and b) Interest Rate Risk in the Banking Book (IRRBB) under Supervisory Review Process	23 June 2006	3 months	3 October 2006 14 December 2006
CP12	Stress testing under the Supervisory Review Process	30 September 2006	3 months	14 December 2006
CP13	Establishment of a mediation mechanism	19 June 2007	3 months	25 September 2007
CP14	First part of CEBS advice to the European Commission on large exposures	15 August 2007	2 months	6 November 2007
CP15	Consultation Paper on risks arising from commodity business and from firms carrying out commodities activities	15 June 2007	6 weeks	10 October 2007
CP16	Consultation Paper on the second part of CEBS technical advice on large exposures	7 December 2007	10 weeks	3 April 2008
CP17	Consultation Paper on its proposals for a common EU definition of Tier 1 hybrids	7 December 2007	10 weeks	3 April 2008
CP18	Consultation Paper on CEBS's technical advice to the European Commission on options and national discretions	22 May 2008	3 months	17 October 2008
CP19	Consultation paper on its technical advice on liquidity risk management (second part)	17 June 2008	6 weeks	18 September 2008
CP20	Consultation paper on technical aspects of diversification under Pillar 2	27 June 2008	4 months	TBA
CP21	Compendium of Supplementary Guidelines on implementation issues of operational risk	19 December 2008	3 months	TBA
CP22	Guidelines on Passport Notifications	11 May 2009	3 months	TBA
CP23	High-level principles for Remuneration Policies	3 April 2009	1 month	20 April 2009

## 5.4. OUR WORK PROGRAMME

### 5.4.1. Accomplished timeline 2008

CEBS Work Programme 2008	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
CEBS meetings			5			13				8		4
<b>1. Regulatory advice and other externally driven work</b>												
Liquidity						*						
Own funds												
Large Exposures												
National Discretions					*							
Analysis of the effects of the CRD in the economic cycle												* *
Supervisory reporting												
- amendment to Corep guidelines: reporting frequency and remittance dates												
- streamlining of Finrep guidelines												due to incorporation of CRD changes
- analysis of simplified reporting procedures - one entry point									*			final decision postponed to 2010
- use test of Corep												postponed to 2009, to allow for incorporation of the revised CRD changes
Transparency of securitization activities and structured products under the CRD						*						
Valuation and risk management												
Equivalence of third countries supervision (Swiss and US)												
Supervisory and sanctioning powers												
Delegation of tasks												
Strengthening the application of the Level 3 guidelines, recommendations and standards						*						completion postponed to answer to EU Commission request on supervisory powers
Improvements of working procedures and decision making mechanisms												
<b>2. CEBS own initiative work on supervisory convergence</b>												
Supervision of liquidity risk												
Pillar 2 implementation issues: economic capital models, diversification benefits and capital allocation, level of application of ICAAPs												
- supervisory assessment of economic capital models												postponed due to other priorities related to the unfolding of the crisis
- guidance on diversification benefits arising from internal models										*		finalisation in 2009
- range of practices paper for assessing economic capital models												postponed due to other priorities related to the unfolding of the crisis
- range of practices paper for assessing risk sensitive capital allocation												postponed due to other priorities related to the unfolding of the crisis
- statement on the level of application of ICAAP												
CRD implementation issues: list of central counterparties												work stopped due to other priorities relating to the unfolding of the crisis
CRD implementation issues: CRD transposition group's (CRDTG) queries	ongoing	ongoing										
Operational risk												to be continued in 2009
Monitoring of minimum capital requirements under CRD												*
Impact assessment												*
Monitoring on accounting and auditing developments	ongoing	ongoing										
Convergence of Pillar 3 implementation												
Maintenance of reporting frameworks	ongoing	ongoing										
Supervisory disclosure												finalisation in 2009
Passport notifications												finalisation in 2009
<b>3. Co-operation and information exchange issues</b>												
Operational networking	ongoing	ongoing										
Cooperation in crisis situations	ongoing	ongoing										*
Cooperation with third countries' supervisors	ongoing	ongoing										
<b>4. Developing tools and working procedures</b>												
Common training and staff exchanges	ongoing	ongoing										
Peer review exercise						*						finalisation in 2009
Mediation mechanism	ongoing	ongoing										

1st deliverable \*

Planned 

Accomplished 

## 5.4.2. Work programme 2009

Progress made in 2008

1. The activities undertaken by CEBS in 2008 were very much focused on four topics:
  - Dealing with the **unfolding crisis situation** on the financial markets, amongst others by addressing the projects mentioned in the EU roadmap on the market turmoil and facilitating our members;
  - Addressing the follow-up work from the conclusions of the **Lamfalussy review**, especially with regard to the strengthening of the role of CEBS as a level 3 committee as set out in the EU roadmap on financial institutions;
  - Providing **technical advice to the EU Commission** on CRD-related issues, including the finalisation of the advice on own funds, large exposures, liquidity, national discretions and the work on the impact of the CRD in the economic cycle;
  - Giving **further guidance** in the delivery of the Capital Requirements Directive by our members which has now been implemented by our members.
2. On the **unfolding crisis situation** CEBS has stepped up its co-operation amongst members, facilitated swift information exchange (e.g. by means of conference calls), developed guidance as endorsed by the ECOFIN on the disclosures by banks as the crisis situation was unfolding, monitored the implementation of this guidance, analysed the problems associated with the valuation of assets that became illiquid, provided recommendations, as endorsed by the ECOFIN, to banks and accounting standard setters on this topic, provided comments on the proposals made by the EU Commission on regulatory changes, developed a process for delivering periodic risk assessments to the EU institutions and provided a first assessment mid this year to the EFC-FST. In addition, CEBS has contributed to the development of the MoU that has been established between supervisors, central banks and Ministries.
3. On the **implementation of the EU roadmap** on the Lamfalussy review, CEBS has agreed mid 2008 to implement Qualified Majority Voting, established its Review Panel, has facilitated the co-operation and co-ordination within colleges of supervisors and the monitoring of their functioning and developed a time-line for the delivery of a fully harmonised supervisory reporting system by 2012.
4. With regard to the **advices to the EU Commission** CEBS finalised its advice on own funds with a special focus to the treatment of hybrid capital instruments, issued an advice on the large exposures rules in the EU which is geared towards managing the idiosyncratic risk of a default of individual counterparties, has issued an advice on liquidity and will advise the EU Commission on the deletion of national discretions and options that are now part of the CRD but hinder a sufficiently converged treatment amongst EU member states.
5. On **level 3 guidance**, CEBS prioritised its work such that planned activities linked with the implementation of the EU roadmaps were given the highest priority whereas other areas have been postponed. Key areas on which level 3 guidance has been developed, were operational networking and colleges of supervisors, liquidity risk management, transparency and disclosure and valuation of illiquid assets.
6. Given the need to prioritise, Pillar 2 implementation issues, especially those related to diversification benefits arising from internal economic capital models (ECMs), based on assessments conducted by joint examination teams on a sample of EU groups, and on the level of application for Internal Capital Adequacy Assessment Processes (ICAAPs) have been **postponed until 2009**.
7. In developing its initiatives, CEBS has further intensified its dialogue with its external stakeholders. More specifically, for key areas on which CEBS developed initiatives, **industry expert groups** have been set up that provided technical expertise in the process. Furthermore, the dialogue with its Consultative Panel has intensified and CEBS has held hearings on every important topic.

### Projects for 2009

#### Prioritisation

8. CEBS has identified the topics it needs to work on in the future. In order to be able to react swiftly to the changing situation on the financial markets, CEBS will utilise a strict prioritisation scheme in planning and executing its activities. To this end, a distinction is made between:
  - Priority 1: these activities are key and need to be delivered within the agreed upon time schedule. Resources will firstly be allocated to these priority 1 activities.
  - Priority 2: these activities are important for CEBS to deliver but could to some extent be postponed, if necessary.

- Priority 3: these activities will only be undertaken in as far they do not conflict with the resources needed for priority 1 and 2 activities.

Given the changing developments in the financial markets, priorities can be changed in the course of 2009. Both the Extended Bureau and the Consultative Panel will be instrumental in this re-prioritisation exercise and changed priorities will be formally agreed upon at CEBS main committee meetings. Priorities in the work programme have already been revised to take account of the G20 roadmap, for which CEBS has been tasked with a number of deliverables at the European level.

### Key activities for 2009

9. The highest priority has been given to CEBS' activities in relation to the current crisis situation and to CEBS' deliverables connected to the EU roadmaps. More specifically, CEBS has identified the following projects as being high priority projects for delivery in 2009:

- **Crisis management:** Given the current market situation it goes without saying that crisis management is paramount to CEBS and its members in our day-to-day supervisory practise. CEBS will continue facilitating as far as possible adequate information exchange between members and will provide guidance on topics of common concern and/or interest. In this regard, CEBS plans:
  - to set up recommendations on the functioning of colleges of supervisors in a crisis situation,
  - to implement practical tools at the level of the CEBS secretariat to facilitate information exchange between members in the current crisis situation,
  - to analyse the supervisory implications of the national "rescue plans" and to look at crisis events by analysing the approaches taken by supervisors and supervisory tools applied.

Due to the unfolding of the crisis, the crisis management exercise in which CEBS would participate has been postponed.

- **Early intervention mechanisms:** the EU Commission is developing a white paper on early intervention tools for which a request for assistance has been sent to CEBS. CEBS's review panel is currently preparing an overview of 'all pre-liquidation stabilisation measures' available at national supervisors for achieving timely solutions at a troubled institution as well as under which conditions these measures can be used. There is

a genuine interest to EU supervisory authorities to comment on this EU initiative and if necessary to develop policy-recommendations, especially with a view to having a sufficiently streamlined approach for these tools for cross-border operating banking groups.

- **Transparency, disclosure and valuation:** CEBS presented mid 2008 its good observed practises on adequate disclosures concerning assets that are relevant in the current market situation. In 2009 the major EU cross-border operating banks will for the first time disclose Pillar 3 information. CEBS will assess both the adequacy of the end 2008 disclosures of banks as well as the upcoming Pillar 3 disclosures presented to the market, and will present, if necessary, policy recommendations to increase the quality of these disclosures. CEBS will also assess the progress made by the banking industry in enhancing the transparency of securitisation activities and will follow-up on its 2008 report on issues regarding the valuation of complex and illiquid financial instruments.
- **Periodic risk assessments:** in 2008, CEBS developed a mechanism on how to perform on a periodic basis focused risk assessments, building upon a macro-economic analysis provided by the Banking Supervision Committee. In 2009, CEBS will continue to deliver these assessments to identify important risk areas, their relevance to banks, the measures banks have taken to mitigate these risks and possible policy responses needed.
- **Liquidity risk management:** in 2008 CEBS developed recommendations for liquidity risk management and supervision and presented its proposal for regulatory changes. In 2009 CEBS will do the follow-up work, as already announced in its 2008 products. More specifically, CEBS will develop more detailed guidance on the composition of liquidity buffers and the definition of the survival period, as well as on internal transfer mechanisms, will develop criteria for assessing internal methodologies and will explore the possibility of developing a minimum set of common quantitative and qualitative information requirements.
- **Colleges of supervisors and other network mechanisms:** The current market situation and the actions taken by supervisory authorities demonstrate that supervisory cooperation, coordination and information exchange is of the utmost importance. Promoting supervisory cooperation and coordination through colleges of supervisors has been high on the

agenda of CEBS since its inception, by fostering the functioning of colleges of supervisors and tackling issues raised by members or the Industry Platform on Operational Networks. CEBS will draw lessons from the current experiences in order to improve the current cooperation and coordination supervisory mechanisms in place, as well as identify possible other networking mechanisms.

- **Guidelines on hybrid capital instruments:** As part of the follow up of CEBS proposals on hybrid instruments, which has translated into European Commission's proposals for revising the CRD, CEBS will elaborate operational guidelines on the precise criteria for hybrids instruments to qualify as capital for regulatory purposes.
- **Supervisory reporting:** In 2008 CEBS and CEIOPS developed a plan to introduce harmonised supervisory reporting by 2012. This plan has been endorsed by the ECOFIN. In order to have the framework accomplished in the agreed upon timeframe, several deliverables need to be agreed upon already in 2009, both on COREP and on FINREP.
- **Training programmes:** In 2008, CEBS agreed with the other level 3 committees to develop as of 2009 a number of 3L3 training programmes. To some extent, funds have been provided by the EU Commission to undertake these programmes. 2009 will be a pilot year in which a first 3L3 programme will be run and a structure will be set up within the secretariats to manage the trainings.
- **Securitisation:** In 2009, the revised CRD should modify the supervisory treatment of securitisation activities. CEBS will work on the implementation guidance of the revised regulation, notably on retention clauses.
- **Pillar 2:** Pillar 2 is an area in which at the moment there are quite divergent practises amongst member states. In a number of these areas it is felt important to further develop a more harmonised approach, more specifically as regards:
  - Guidelines on the joint assessment process
  - the range of practices between supervisory approaches to stress testing under Pillar 2
  - Concentration risk

#### Priority 2 activities for 2009

10. Besides ongoing topics like the monitoring of accounting & auditing standards, the development of guidance on the implementation of the 3rd EU anti money-laundering directive, the handling of Q&As on the implementation of the CRD and COREP & FINREP and the yearly Peer Review exercises, CEBS plans also to address the following topics as priority 2 activities in 2009:

- **Pro-cyclicality:** CEBS has been invited to work in an EU working group on the topic of pro-cyclicality. CEBS already acts as a joint sponsor of the TFICF (together with the BSC) aiming for analysing the effects of the Capital Requirements Directive on the economic cycle. Also in the BCBS and the FSF work is being undertaken in this area. CEBS plans to liaise as much as possible with these work streams. In addition, CEBS will analyse the impact of declining capital levels.
- **Amendments to the CRD:** especially in 2008, a number of changes in the CRD have been initiated by the EU Commission to be effected in the coming years. In 2009 CEBS will be monitoring these upcoming changes and might develop level 3 tools, partly as spin-off of work already undertaken in 2008 in the different calls for advice or already announced in these advices. Apart from the work on hybrid capital instruments and the guidelines on securitisation, which are assigned a high priority, areas for which this is planned, are:
  - Large exposures
  - National discretions and options.

In addition, CEBS will elaborate guidelines on implementing the incremental default risk charge in the trading book, monitor the changes concerning home and host responsibilities, and might revise its tools for cross-border cooperation accordingly.

- **Supervisory disclosure:** CEBS developed in 2007 its guidelines on supervisory disclosure, specifically aimed at the Capital requirements Directive. The supervisory framework is now in operation. A number of topics have been identified to further improve the use of this framework. In addition, the scope of the current framework could be enlarged. In 2009 a study will be undertaken to amend the guidelines, which could take effect in 2010-2011.

- **Financial conglomerates:** In 2009, the IWCFC will focus its work on the Financial Conglomerates Directive, especially geared towards a study on the implementation of said directive in the different member states and possibly on the development of proposals for regulatory changes, dependent upon the outcome of this exercise.
- **Mediation:** CEBS has introduced the mediation mechanism among its members in its Charter. Until now, CEBS did not use this mechanism. For 2009, a case study will be undertaken to learn how this mechanism could be utilised in practise.
- **Delegation:** The three levels 3 Committees will work in 2009 to deal with any possible follow-up work to their 2008 work on delegation of decisions/responsibilities. Further they will also assist the Commission in the continued work with regard to the options for voluntary delegation of supervisory competences.

#### *Priority 3 activities*

11. A number of activities have been earmarked as priority 3 activities. These activities will only be undertaken in 2009, when CEBS will have sufficient resources available. Given the current situation in the financial markets, it is uncertain whether that will be the case. Topics that have a low priority include:
- The development of a range of practises paper under Pillar 2 on **interest rate risk** in the banking book
  - Possible follow-up work on **diversification** under Pillar 2
  - Work on business, strategic and reputational risk, on internal governance and on economic capital models
  - The establishment of a CEBS network on the treatment amongst member states on hybrid capital instruments
  - Some topics in the intermediate 3L3 work programme, like the guidance on internal governance, the periodic report on non-cooperative jurisdictions and the development of 3L3 fit & proper requirements
  - Updating the guidelines on validation (GL10)
  - Updating the Pillar 3 implementation study undertaken in 2007

#### *Detailed template on the work programme 2009*

12. A more detailed template on the deliverables that are foreseen for 2009 is provided in appendix. For every deliverable, it shows their priority, deadline and origin of the request.

#### *Monitoring of progress and bottlenecks*

13. As of 2009, the main committee will be informed on a quarterly basis about the progress of the work programme. Possible bottlenecks will then be identified and changes in priorities as proposed by the Bureau will be agreed upon.



	<b>For the year to 31 December 2008</b>	<b>23 June to 31 December 2007</b>
	<b>£'000</b>	<b>£'000</b>
<b>Revenues</b>		
Contributions from members	2,514	1,228
Other income	200	203
Interest	97	66
<b>Total Revenue</b>	<b>2,811</b>	<b>1,497</b>
<b>Expenses</b>		
Secondment fees	1,135	840
Premises	400	447
Professional fees	51	49
Communication costs	54	38
Depreciation	174	215
Computer and IT development	77	80
Travel	106	132
Salaries and employee benefits	100	91
Meetings	44	96
Office supplies	29	20
Miscellaneous	14	9
<b>Total expenses</b>	<b>2,184</b>	<b>2,017</b>
<b>Excess of revenues over expenses before taxes</b>	<b>627</b>	<b>(520)</b>

Members contributions were used during the period to fund the expenses above and to pay for the following fixed assets:

Improvements to premises	-	66
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The above are not the company's statutory accounts. The statutory accounts for the year ended 31 December 2008 have been delivered to the Registrar of Companies and received an audit report which was unqualified and did not contain statements under s237(2) and (3) of the Companies Act 1985.

## 5.6. LIST OF ABBREVIATIONS AND TERMS USED

**3L3** three “Level-3 Committees” or “Lamfalussy Committees” (CESR, CEBS and CEIOPS)

**AMA** Advanced Measurement Approach

**AMLTF** Anti Money Laundering Task Force

**BCBS** Basel Committee on Banking Supervision

**BSC** Banking Supervision Committee

**CAD** Capital Adequacy Directive (2006/49/EC)

**CEBS** Committee of European Banking Supervisors

**CEIOPS** Committee of European Insurance and Occupational Pensions Supervisors

**CESR** Committee of European Securities Regulators

**Commission** European Commission

**COREP** Guidelines on Common Reporting

**CRD** Capital Requirements Directive (refers collectively to both 2006/48/EC and 2006/49/EC).

**EBC** European Banking Committee

**ECOFIN** Economic and Financial Council

**EEA** European Economic Area

**EFC** Economic and Financial Committee

**EFCC** European Financial Conglomerates Committee

**EFC-FST** Economic and Financial Committee - Financial Stability Table

**EGFI** Expert Group on Financial Information

**EGPR** Expert Group on Prudential Regulation

**EIOPC** European Insurance and Occupational Pensions Committee

**ESC** European Securities Committee

**EU** European Union

**FCD** Financial Conglomerates Directive (Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council, OJ L 35 of 11.2.2003)

**FINREP** Standardised framework for consolidated financial reporting for credit institutions (Financial Reporting)

**FSF** Financial Stability Forum

**GdC** Groupe de Contact

**IA** Impact Assessment

**IAASB** International Auditing and Assurance Standards Board

**IAS** International Accounting Standards

**IASB** International Accounting Standards Board

**ICAAP** Internal Capital Adequacy Assessment Process

**IESBA** International Ethics Standards Board for Accountants

**IFRS** International Financial Reporting Standards

**IRB** Internal Ratings Based Approach

**IWCFC** Interim Working Committee on Financial Conglomerates

JCFC Joint Committee of Financial Conglomerates

**MiFID** Markets in Financial Instruments Directive (Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, OJ No. L 145 of 30 April 2004)

**Panel** CEBS Consultative Panel

**RCCP** Recommendations for Central Counterparties

**RSSS** Recommendations for Securities Settlement Systems

**SON** Subgroup on Operational Networking

**SREP** Supervisory Review Process

**TSA/ASA** Standardized Approach/Alternative Standardized Approach

**XBRL** Extensible Business Reporting Language

