

15 October 2007

Peer review: Methodology

Below is the CESR Methodology for Self-Assessments and Peer Review Tool as published in January 2007 (CESR/07-071b), adapted for CEBS' purposes.

METHODOLOGY FOR PEER REVIEW

Having regard to the Review Panel Protocol (the "Protocol"), and more specifically Article 5 of this Protocol.

The members of the Committee of European Banking Supervisors ("CEBS") have agreed:

GENERAL PROVISIONS

1. Peer reviews are conducted by the Review Panel with a view to assess whether the objectives of supervisory provisions or practices, as set out in Community legislation, in CEBS Guidelines or other CEBS documents, are sufficiently met by CEBS authorities in accordance with Article 2 of the Protocol, and to monitor and encourage convergence of supervisory practices.
2. Each peer review exercise consists on a self-assessment conducted by CEBS authorities and a review by peers. The self-assessment is always conducted. However, in some cases, a review by peers of a self assessment may not necessarily follow.
3. Each peer review exercise is to be conducted according to the terms of the mandate defined by CEBS, as established in Article 6 of the Protocol. Depending on the terms of the CEBS mandate, a peer review exercise may refer only to the minimum 'requirements' of a supervisory provision or practice or cover also 'good/best' supervisory practices.
4. This document sets out the methodology for peer reviews, including the guidance and procedures for the completion of both self-assessments and review by peers, the reporting and publication requirements, and the procedures for self-assessments and reviews updating.
5. This methodology is subject to revision, upon proposal by the Review Panel, which should occur at the latest in two years time.

PEER REVIEW ASSESSMENT CRITERIA, QUESTIONS AND BENCHMARKS

6. On receipt of the mandate from CEBS, the Review Panel starts the peer review exercise.
7. For each supervisory provision or practice subject to peer review, the Review Panel will devise the 'assessment criteria', a corresponding set of 'questions' addressed to CEBS authorities, the 'benchmarks' and possible 'requests for further information'. Against these 'assessment criteria', 'questions' and 'benchmarks' CEBS authorities will self-assess and the Review Panel will review whether the objective of each supervisory provision or practice is sufficiently met. Where a supervisory provision or practice forms part of a set of such provisions or practices an overall assessment of each CEBS authority regarding the whole set of supervisory provisions and practices subject to the peer review exercise will also be determined.
8. For devising the 'assessment criteria', set of 'questions', 'benchmarks' and possible 'requests for further information', the Review Panel may, when considered necessary, namely in order to avoid duplication of work, seek input from the relevant CEBS Expert Groups.
9. The 'assessment criteria' comprise the essential elements and intended outcome of the supervisory provision or practice subject to peer review. The 'assessment criteria' must be as objective as reasonably possible.
10. The 'assessment criteria' are transformed into a set of 'questions', devised for CEBS authorities to answer with a 'yes' or 'no' (or 'not applicable') according to the guidance set out in the self-assessment guidance and procedure section below. 'Questions' must be as clear and objective as possible and the number of 'questions' may vary, usually in accordance with the level of detail of the 'assessment criteria'.
11. The 'assessment criteria' combine to form the basis of 'benchmarks' which correspond to a transparent and objective evaluation of to what degree each CEBS authority is fulfilling the aims of the supervisory provision or practice subject to peer review. 'Benchmarks' will be set for each supervisory provision or practice, and also, overall, regarding the whole set of supervisory provisions or practices subject to peer review.
12. When establishing the 'benchmarks', the nature of the supervisory provision or practice being assessed will be taken into account. In particular, different 'assessment criteria' may not be of equal importance (i.e. either essential or auxiliary) and the number of 'assessment criteria' met is not always an indication of the overall evaluation for each supervisory provision or practice subject to peer review. The specific criteria or combinations thereof which correspond to each benchmark will be clearly set out at the beginning of each exercise.
13. For benchmark purposes, the following three grade-scale will be used:
 - a. *Fully Applied: When all essential assessment criteria specified in the benchmarks) are met without any significant deficiencies.*

- b. *Partially Applied: When most of the essential assessment criteria specified are met e.g. when most of the essential assessment criteria specified are met resulting in a reduced level of overall adequacy of application*
- c. *Not Applied: When one or more of the essential assessment criteria specified are **not** met e.g. resulting in a significantly reduced level of adequacy of application.*

14. The Review Panel may, when necessary given the nature of a specific peer review exercise, devise bespoke grade-scales.
15. The Review Panel may 'request further information' from CEBS authorities, namely in order to better understanding the effectiveness of the supervisory provisions or practices applied or to examine possible divergences in implementation beyond the minimum 'requirements' of each supervisory provision or practice subject to peer review.
16. When devising the 'assessment criteria', 'questions', 'benchmarks' and possible 'requests for further information', the Review Panel will also define the categories of information to be classified as confidential for publication purposes.

SELF-ASSESSMENT GUIDANCE AND PROCEDURE

17. After approval by the Review Panel, the 'assessment criteria', 'questions', 'benchmarks' and possible 'requests for further information', are distributed to the CEBS authorities, in a table format. CEBS authorities will be required to complete the 'self-assessment', i.e. to provide answers to the 'questions' and to self-assess against the 'benchmarks' for each supervisory provision or practice and also for the whole peer review exercise.
18. Each CEBS authority will undertake a self-assessment and provide the completed table, via the CEBS internet tool, within the timeframe defined by the Review Panel for each peer review exercise.
19. The principle for completing the table is that every single question has to be answered, even if the supervisory provision or practice has not been applied ('comply or explain' approach) and any information required must be provided.
20. 'Questions' left unanswered will be classified '*not contributing*' and may lead to a statement of non contribution as regards the overall assessment.
21. If a supervisory provision or practice is not applicable, the CEBS authority must state the reason for its non-applicability. In such cases, the supervisory provision or practice will be classified as '*not applicable*'.
22. If a supervisory provision or practice has been applied, either in full or partially, the CEBS authority must provide information on the national

implementing measures¹, including policies, procedures and other practices implemented, considering that peer review aims at compliance and convergence in practice, not just from a legal perspective.

23. National implementing measures may include laws (i.e. acts of Parliament) and regulations (i.e. decrees of ministries or rule books of CEBS authorities), guidelines and circulars of CEBS authorities (provided that non-compliance with these guidelines and circulars should trigger enforcement action by the CEBS authority concerned), rules of self-regulatory organisations, such as industry associations (where applied by a significant part of the industry in a specific Member State and provided that non-compliance with those rules triggers enforcement action by the self-regulatory organisation concerned or by the CEBS authority), and relevant case law. Internal procedures followed by CEBS authorities that do not trigger enforcement action are also classified as implementing measures for these purposes.
24. If a national implementing measure is considered by the relevant CEBS authority as going beyond the 'requirements' of the supervisory provision or practice subject to peer review, this fact should be stated. As regards the assignment of one of the grade-scales in such cases, this has to follow a case-by-case approach taking into account considerations, such as the level of harmonisation intended by the supervisory provision or practice in question, its regulatory objective, or compliance with relevant Community legislation and/or CEBS documents.
25. Any derogation from a national implementing measure or any possibility for issuing a waiver from the 'requirement' should be stated explicitly, together with the rationale for any such exemption, and should be taken into account in the self-assessment.
26. If a national implementing measure is not in force but has already been formally adopted, and there is a concrete date of its coming into force within a reasonable period of time after the peer review exercise has started, it must be assessed as if it had been in force at the time of the self-assessment. The Review Panel will establish what is a 'reasonable period of time'.
27. If a national implementing measure relating to the supervisory provision or practice subject to peer review is in the process of being drawn up, this fact has to be stated, provided that the implementing measure is already in a concrete stage (e.g. a proposal to Parliament or publication of a consultation paper).
28. If a supervisory provision or practice has not been fully applied, the CEBS authority must state, at a minimum, the reason for the non-full application, and, if applicable, the action taken so far to achieve full application, and the proposed timing of full application.

¹ This includes the text of the national implementing measures, in English version if available. When an English version is not available, the answer should describe the relevant implementing measure in English.

29. The CEBS Secretariat will, where necessary, request further explanation from individual CEBS authorities as to the completeness of their responses in order to achieve an acceptable level of consistency in the self-assessments and, if deemed necessary, will stipulate that the responses need to be (redone) within a set timeframe. Each CEBS authority is responsible for the accuracy and completeness of the information provided.
30. If a CEBS authority does not cooperate or does not meet the prescribed timeframes, the Chair of the Review Panel will ask the CEBS member of the relevant CEBS authority to explain the reasons of this non cooperation and will set a deadline for compliance, as established in Article 4, paragraph 4 of the Protocol. If said deadline expires, the peer review exercise will continue without the input of this member and the outcome will be published and/or communicated with a statement that the particular CEBS authority has been classified as *'not contributing'*.
31. The CEBS Secretariat will also prepare a paper setting out the information that each CEBS authority has included in the self-assessment but classified as confidential for publication purposes. In the event that there are differences between such information and the categories of information defined as confidential according to paragraph 16 of this document, the CEBS Secretariat will discuss the differences with the relevant CEBS authority. The CEBS Secretariat will report the outcome of such bilateral discussions to the Review Panel. If the Review Panel agrees, for confidentiality reasons, this information will also be excluded from publication.
32. Once completed and before the review by peers starts, all the self-assessments will be made public on a named basis, on the CEBS website, together with individual responses of CEBS authorities, as established in Article 11, paragraph 1 of the Protocol. If considered necessary by the Review Panel, a report explaining the self-assessment exercise will also be published at that time. Such report is prepared by the CEBS Secretariat and is subject to the approval of the Review Panel. CEBS approval is not necessary.

REVIEW BY PEERS PROCEDURE

33. The 'review by peers' provides an independent, objective and consistent assessment of CEBS authorities on an individual and comparative basis. It involves the Review Panel's assessment of CEBS authorities' implementation and convergence in supervisory provisions or practices based on the self-assessments and information received. Unless the Review Panel determines, subject to CEBS approval, that the results of a self-assessment exercise are such that a review by peers would not contribute to the objective of peer review, a review by peers will be undertaken by the Review Panel, assisted by the CEBS Secretariat.
34. The review by peers will be conducted according to the terms of the mandate defined by CESB, as established in Article 6 of the Protocol. When proposing what to review, the Review Panel will consider any comments received from market participants following the publication of the

self-assessments and will focus its efforts on those areas that raise significant problems in relation to the operation of the Single Market or to the effectiveness or efficiency of supervision.

35. The Review Panel (or any subgroup(s)² of the Review Panel deemed necessary, as established in Article 3, paragraph 3 of the Protocol) assesses all CEBS authorities jointly and simultaneously, in order to minimise the risk of uneven or biased results.
36. To avoid conflicts of interests, each Review Panel member (or each member of the sub-group(s)), should not participate in the review of his/her own authority or country.
37. When conducting the review by peers, the Review Panel can seek clarifications on the subject under review from the relevant CEBS Expert Groups through their Chairs. The Review Panel may also invite CEBS authorities to provide additional clarifications.
38. For each peer review exercise, the Review Panel (or any subgroup(s) of the Review Panel deemed necessary) prepares a report with the findings of the review, including the information set out in Article 2, paragraph 7 of the Protocol.
39. Before expressing views on specific problems encountered by individual authorities and recommending ways for achieving full implementation by the relevant CEBS authority, bilateral discussions on this issue will take place between the Chair of the Review Panel and the CEBS member of the relevant CEBS authority. The recommendations and the explanations received from the reviewed CEBS authorities must be submitted to the Review Panel for consideration.
40. Any Review Panel's member who objects to a specific issue in the final report which refers to his/her own CEBS authority or country will not block the submission of the final report to CEBS and may provide explanations to be annexed to the report before its submission to CEBS.

FINAL REPORT APPROVAL BY CEBS

41. Once approved by the Review Panel, the final report will be reported to CEBS in accordance with Article 10 of the Protocol.
42. The final report of the Review Panel is approved by CEBS at Plenary and should be distributed to CEBS Members at least two weeks before the CEBS meeting to allow for the necessary preparation by CEBS authorities.
43. At the CEBS meeting, the Chair of the Review Panel shall highlight any significant difficulty encountered. Also, in the event that there is a dissenting opinion, as described in paragraph 39 of this document, it will be presented in the CEBS meeting by the CEBS authority which drafted it.

² Depending on the size of the exercise, more than one subgroup could be established.

44. CEBS may ask the Review Panel to modify the final report should it find for example that a dissident opinion is well grounded or justified. CEBS may also, after discussing the reasons, decide a selective publication of an outcome of the Review Panel by way of exception for example for reasons of confidentiality.
45. Should CEBS decide that changes to the final report are to be made which affect the explanations of the relevant CEBS authority, amendments to these explanations should be submitted to the CEBS Secretariat within two weeks after the CEBS meeting in order to ensure that the comments are annexed to the final report.

FINAL REPORT PUBLICATION

46. Once approved by CEBS, the final report of the Review Panel will be made public on the CEBS website, in full and on a named basis, together with any other accompanying document CEBS considers necessary for information purposes, as established in Article 11, paragraph 2 of the Protocol.
47. Should any recommendations for ways of achieving full implementation be published, explanations of the CEBS authority to which recommendations relate, are included, if so requested by that CEBS authority. In the event that the CEBS authority is unable to provide explanations before publication, it will be possible to have the explanations posted on CEBS's website alongside the final report after publication.
48. The final reports of the Review Panel, as approved by CEBS, are not subject to formal consultation.

UPDATING OF SELF-ASSESSMENTS PROCEDURE

49. The self-assessments provided by CEBS authorities can be updated as necessary by making a request to the CEBS Secretariat, and specifying what needs to be changed. The CEBS Secretariat will open access for such updating, and shall keep a record of what is being updated and when.
50. When updating the self-assessments, CEBS authorities are to follow the procedure provided for in the self-assessment guidance and procedure section above. Once the self-assessment is updated and its completeness verified by the CEBS Secretariat, it will be made public alongside with the previous self-assessment together with a statement making it clear that the update has not been reviewed by the Review Panel.

REVIEW OF UPDATED SELF-ASSESSMENTS

51. Every three months the CEBS Secretariat will send a report to the Review Panel presenting all the changes that have been made.
52. Should a sufficient number of CEBS authorities update their self-assessments in the same period, the CEBS Secretariat will assess the

need to bring forward to the Review Panel a proposal on the timing of a full review of the updated self-assessments.

53. The review of the updated self-assessments will follow the guidance and procedures set out in the 'review by peers procedure', 'final report approval by CEBS' and 'final report publication' sections above.