

**CEBS**

Committee  
of European  
Banking  
Supervisors

**Annual Report**  
**2004**



This Annual Report has been submitted to the European Commission, the Council and the European Parliament, in accordance with Article 6 of Commission Decision of 5 November 2003 Establishing the Committee of European Banking Supervisors (2004/5/EC) and Article 6.1 of the Charter of the Committee of European Banking Supervisors.

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On behalf of all the members of the Committee of European Banking Supervisors (CEBS), I am pleased to present the Committee's first Annual Report. This Annual Report enhances our accountability to the European Commission, the European Parliament and the Council (the "European Institutions"). It provides us with an opportunity to report back on our work over the past year and to reflect on the future. This report, together with our published work programme, will assist the European institutions, the banking industry and users of banking services in forming a view on how well CEBS is fulfilling its tasks.

CEBS was established as part of a set of measures to improve EU financial market regulation. Such improvements should ultimately facilitate further integration and increase the EU's competitiveness in global financial markets. CEBS is charged with three main tasks. First, it provides advice to the European Commission on EU legislation in the banking sector. Second, it contributes to consistent implementation of EU legislation across the EU. And third, it promotes convergence of supervisory practice and fosters co-operation between supervisors.

The first operational year of CEBS has been dominated by work related to the proposed Capital Requirements Directive (CRD), which will implement the 'Basel II' capital adequacy framework in the EU; and to the adoption of International Financial Reporting Standards (IFRS).

Basel II and IFRS present a unique opportunity to promote greater co-operation between supervisors and greater consistency in supervisory approaches across the EU. CEBS is ideally positioned to take advantage of this opportunity.

The progress made by CEBS in its first year owes a great deal to the efforts of its Members, and I would like to take this opportunity to thank them for their commitment to our work. I also would like to applaud the dedication of the professionals who make up the CEBS Secretariat. They are the key driving force behind the Committee, and are to be especially congratulated for their achievements during 2004, given that they have simultaneously been occupied with supporting the Committee, establishing its corporate structures and setting up its offices in the City of London.

Turning to the future, work on CRD-related issues will continue to predominate in 2005, and will be the subject of a number of public consultations. In addition, cross-sectoral issues are likely to become more prominent in CEBS' work. Co-operation with the other Level-3 committees – CEIOPS in the insurance sector and CESR in the securities sector – will intensify during 2005.

CEBS will continue to conduct its work with the highest commitment to transparency. Accountability is a key obligation for CEBS, and one which I personally take very seriously. One of my first public engagements as Chair of CEBS was to appear before the Economic and Monetary Committee of the European Parliament, and I have also spoken at a number of events organised with MEPs and the industry, as well as attending regular meetings within the structures that form part of the 'Lamfalussy' approach.

I am very conscious of the need to raise awareness of CEBS on the part of the banking industry and users of banking services, in order to maximise their input to and feedback on our work. I spoke at a number of industry events and conferences in 2004, and have already scheduled many more for 2005. The workload of the Chair in this respect is quite demanding, especially when combined with my responsibilities at the Banco de España, and I would like to take this opportunity to thank the Vice Chair and the CEBS Bureau for their assistance and support, in particular in representing CEBS at events that I could not attend in person.

Despite our efforts on this front, I feel that more needs to be done to reach out to interested parties. We need to obtain from them a higher level of involvement in our work than we have seen up to now. We will continue to do our part, but the industry and end-users also need to be active, to use the facilities that we have set up to permit them to participate in the process, and to contribute to the dialogue.

I look forward to reporting on further progress next year.

A handwritten signature in black ink, appearing to read 'José María Roldán'.

José María Roldán, Chairman

## 2. Introduction: CEBS' role and task

In the banking sector as in other areas, the responsibility for transposing EU legislation into national law rests with the Member States. The Commission monitors national implementation of EU legislation and ensures that Community rules are properly applied. However, competent national authorities retain primary responsibility for determining how EU legislation is applied in practice: i.e., in taking supervisory decisions and setting supervisory procedures. The role of CEBS in this framework is to promote convergence of supervisory practices and to foster co-operation and information-sharing between national supervisors.

CEBS is composed of high-level representatives from the banking supervisory authorities and central banks of the European Union, including the European Central Bank. Twenty-five member countries and 46 member organisations are represented on the Committee. Iceland, Liechtenstein and Norway participate in the Committee's work as observers. The European Commission and the Banking Supervision Committee of the European System of Central Banks (ESCB) also participate as observers. CEBS is supported by its Secretariat and several expert groups.

The declared aim of EU government leaders is to make Europe "the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion." This overall strategy has been translated into a number of specific targets in different policy areas. CEBS' role in this process is to contribute to the stability of the European financial sector by providing sound technical advice based on best banking, supervisory, and market practices and by promoting consistent implementation of EU legislation as well as convergence in supervisory practices.

The precise role of CEBS is defined in the Commission Decision of 5 November 2003 Establishing the Committee of European Banking Supervisors (2004/5/EC). According to this Decision, CEBS has three main tasks:

- (1) to advise the Commission either at the Commission's request, within a time limit which the Commission may lay down according to the urgency of the matter, or on the Committee's own initiative, in particular as regards the preparation of draft implementing measures in the field of banking activities;
- (2) to contribute to the consistent application and implementation of Community directives and to the convergence of Member States' supervisory practices throughout the Community; and
- (3) to enhance supervisory co-operation and the exchange of information between national supervisors, including the exchange of information concerning individual supervised institutions.

CEBS is building a framework that will help to ensure consistent implementation and application of EU legislation. CEBS is also promoting co-operation and convergence of supervisory practices in the EU. Finally, CEBS is actively involved in advising the Commission on technical details of banking regulation. These activities support the broader aims of the EU and its single market in banking.

The benefits of convergence are not limited to large cross-border groups. Local institutions increasingly find themselves competing with branches and subsidiaries of cross-border institutions, and they too will benefit from convergence of supervisory practices.

CEBS will support the Commission's strategy on the Financial Services Action Plan (FSAP) and post-FSAP. CEBS will highlight constraints on convergence and will aim to flag emerging problems before they become acute. Regular reporting to the European Institutions by CEBS will enable policymakers to form a clear picture of developments in the area of banking supervision and regulation.

CEBS' work has focused initially on supervisory practices relating to capital adequacy. This work was begun before the new EU legislative framework for capital adequacy had been finalised. Most work streams were initiated while the Commission's proposals were still being refined, and the work streams have taken shape while the draft Capital Requirements Directive (CRD) has been progressing through the EU co-decision process.

CEBS plans to issue several documents for public consultation while this process continues. The final CEBS Guidelines may therefore have to be amended to reflect any changes in the final version of the Directive.

CEBS is committed to conducting its work in an open and transparent manner, and to satisfying both formal requirements and public expectations for accountability.

A central element in CEBS' procedures for ensuring accountability is the use of public consultations. Before providing advice to the Commission or taking measures on its own, CEBS consults as fully as possible with market participants, consumers and other end-users. Consultations are public, open to all interested parties, and carried out in a transparent manner. When providing advice on provisions that apply to investment firms as well as to credit institutions, CEBS consults – through its members – with all authorities that have competence for the supervision of investment firms and are not represented in the Committee.

CEBS prepares an annual report which it submits to the Commission and also sends to the European Parliament and the Council. CEBS also publishes its work programme on a yearly basis.

## 2.1 Lamfalussy Framework

The role of CEBS as an independent Level-3 committee is based on the framework proposed by the “Committee of Wise Men on the Regulation of European Securities Markets” chaired by Baron Alexandre Lamfalussy. The Committee of Wise Men was set up by the Economic and Finance Ministers of the EU (ECOFIN) in July 2000, with a mandate to assess current conditions for the implementation of the regulation of securities markets in the EU and to propose scenarios for adapting current practices in order to ensure greater convergence and co-operation in day-to-day implementation of EU-wide regulation.

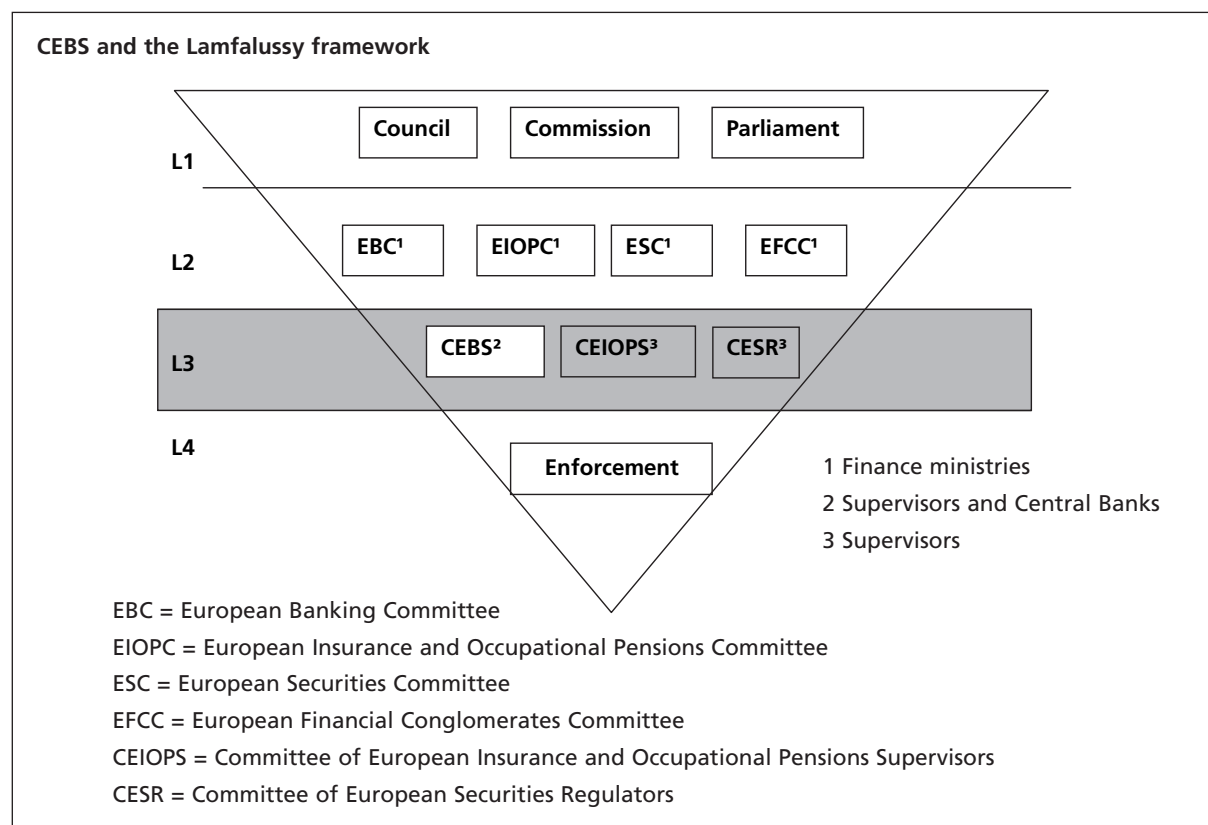
The “Final Report of the Committee of Wise Men on the Regulation of European Securities Markets”, commonly referred to as the “Lamfalussy report”, was published on 17 February 2001. The report identified several shortcomings in the existing system for adopting legislation relating to securities regulation. The system was found to be too slow and too rigid, it tended to produce ambiguous legal texts, and it failed to distinguish between framework principles and practical day-to-day implementing rules. A number of regulatory reforms were proposed to address the shortcomings of the existing system.

These proposals were based on a new, four-level regulatory approach designed to make the decision-making procedures for securities market legislation faster and more flexible, while still ensuring the uniform application of Community law. This approach also envisaged the creation of a new committee structure for regulation and supervision of securities markets.

The four-level approach consists of:

- Level 1 for the framework principles of community legislation, within which the Council and the European Parliament – acting on a proposal from the Commission – agree on the key political orientation on each subject;
- Level 2 for implementing measures i.e. the technical details of Community legislation which are adopted and changed via fast-track procedures, by means of a regulatory committee and on the basis of the advice of a committee of national supervisors;
- Level 3 for co-operation between national authorities and convergence of supervisory practices; and
- Level 4 for enforcement by the European Commission and Member States

The Lamfalussy report recommended increasing the use of regulations and fast-track Level 2 procedures wherever possible, enhancing supervisory and regulatory convergence, semi-annual monitoring of the effectiveness of the



four-level regulatory procedure, and conducting a full and open review of the regulatory process in 2004. The Lamfalussy approach did not alter existing legal and advisory structures, but clarified the roles and responsibilities of the various players in order to provide better advice to the legislative authorities and promote more efficient co-operation among national authorities.

The Lamfalussy report was endorsed by the ECOFIN Council in March 2001. The Stockholm European Council, also in March 2001, welcomed the report and called for implementation of the proposed four-level approach "to make the regulatory process for European Union securities legislation more effective and transparent, thus improving the quality of the legislative measures proposed." Full implementation of the Financial Services Action Plan was scheduled for 2005. In February 2002, the European Parliament agreed on the new approach for regulating European securities markets. An inter-institutional monitoring programme has been established to review the functioning of the new framework at regular intervals.

At an informal ECOFIN meeting in April 2002, it was agreed that work should continue in order to ensure that the EU would have appropriate structures in place for financial regulation and supervision in a rapidly-changing financial environment. The ECOFIN Council invited the EFC (Economic and Financial Committee) to assess possible arrangements for financial regulation and supervision. In its final report, the EFC's recommendation was "to apply the Lamfalussy framework to all financial sectors with arrangements in line with those already implemented for securities, based on existing inter-institutional arrangements, whilst also recognising sectoral specificities." The EFC proposed the creation of three separate sectoral committees, for banking, insurance and securities, at each of Levels 2 and 3. A fourth committee at Level 2 was proposed to deal with financial conglomerates that operate across sectors.

The ECOFIN Council endorsed the final EFC report in December 2002 and invited the Commission "to establish the level 2 committees in an advisory capacity only, and the level 3 committees as soon as possible". The level 3 committees were set up by Commission Decision of 5 November 2003.

The Directive establishing the new financial services committee structure was adopted in 9 March 2005, with the Banking Advisory Committee (BAC) being replaced by the European Banking Committee (EBC). The EBC is composed of high-level representatives of Member States; its chair and the secretariat are provided by the Commission. In order to ensure close co-operation with CEBS, the CEBS Chair is invited to participate at EBC meetings as an observer. In its advisory function, the EBC will be consulted by the Commission on policy issues relating to banking activities and on proposals in this field. The EBC will also assist the Commission in preparing mandates for technical advice by CEBS on draft implementing measures.

#### **The main features of the Lamfalussy approach:**

##### **Level 1: Framework principles**

Level 1 is concerned with broad principles. Directives or Regulations are adopted using 'normal' legislative procedures. Proposals originate in the Commission, following consultation with all interested parties; and they are adopted under the 'co-decision' procedure by the Council and the European Parliament. The Level-1 process must also specify the nature and extent of the detailed technical implementing measures to be adopted at Level 2.

##### **Level 2: Implementing measures**

Level 2 is concerned with detailed technical measures. After consulting with the relevant Level-2 committee (for banking, the EBC – European Banking Committee), the European Commission requests advice from the Level-3 committee (CEBS). CEBS consults with market participants, end-users and consumers, prepares its advice and submits it to the Commission. The Commission reviews the advice and submits a proposal to the EBC. If a qualified majority of the EBC supports the proposal, the Commission enacts the proposal as legislation; otherwise the proposal is submitted to the Council in accordance with the standard regulatory procedure. The proposal passes unless there is a blocking (two-thirds) majority in the Council. The Parliament can issue a Resolution if it considers that the proposed measures are ultra vires. The EC Treaty<sup>1</sup> and the Council decision of 1999<sup>2</sup> do not grant any call-back right to the European Parliament, but the Commission has committed itself<sup>3</sup> to take the Parliament's position into utmost account.

##### **Level 3: Co-operation and convergence**

In addition to their advisory function, Level 3 committees are charged with improving co-operation between supervisors and ensuring common and convergent implementation of level 1 and 2 legislation in the Member States. In pursuit of those goals, they develop joint interpretative recommendations, consistent guidelines and common standards; they undertake peer reviews; and they compare regulatory practices.

##### **Level 4: Enforcement**

Level 4 aims at strengthened enforcement of Community law through more vigorous action by the Commission and enhanced co-operation between Member States, regulators and the private sector.

<sup>1</sup> EC Treaty, Article 202, 1 February 2003.

<sup>2</sup> Council decision 468/1999, Article 5, 28 June 1999.

<sup>3</sup> "Implementation of financial services legislation in the context of the Lamfalussy Report" – intervention by Romano Prodi President of the European Commission to the European Parliament's plenary session Strasbourg, 5 February 2002.



**CEBS' role in giving advice on technical implementing measures:**

**The Commission, after consulting the European Banking Committee, requests advice from the Committee of European Banking Supervisors (CEBS) on technical implementing measures in banking legislation.**

**CEBS consults with the banking industry, other market participants and end-users. The normal consultation period is three months.**

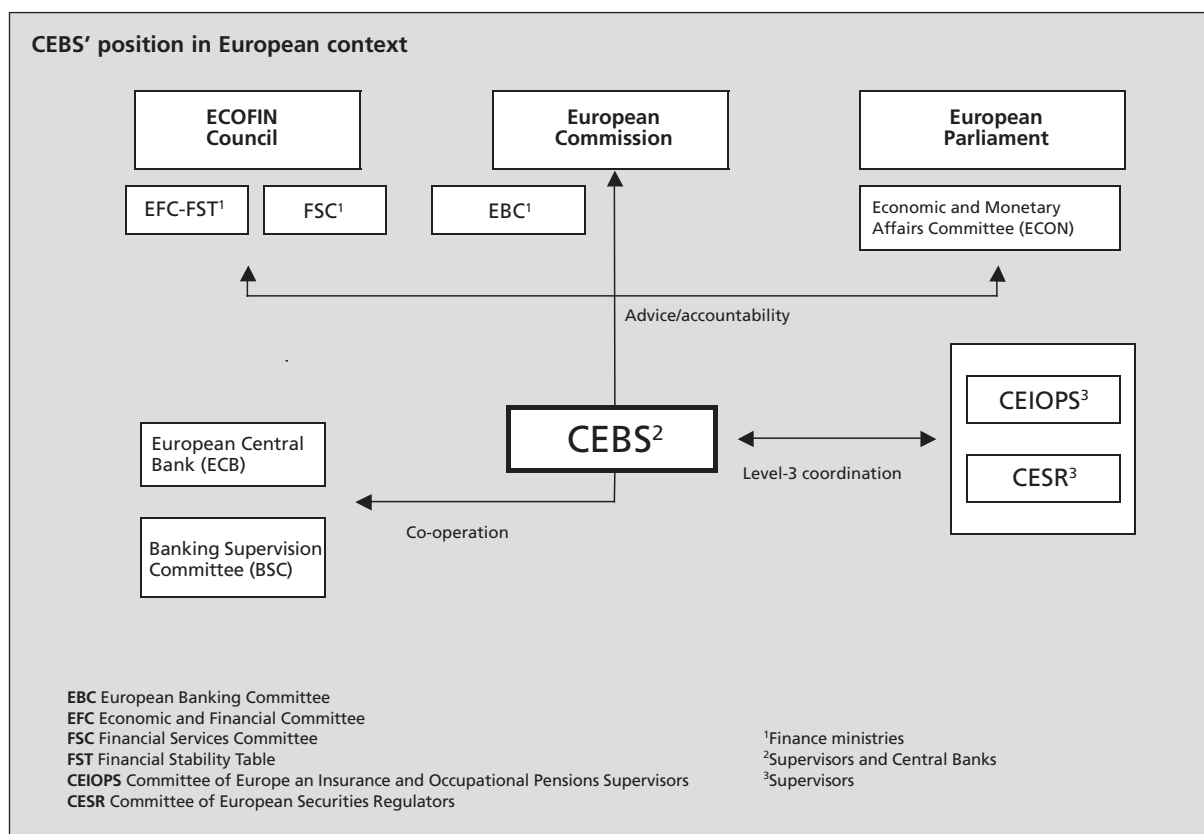
**CEBS submits its advice to the Commission, which draws up its proposal, within the framework of its implementing powers.**

**The Commission forwards its proposal to the European Banking Committee.**

**The European Banking Committee votes on the proposal.**

**The European Parliament examines the final draft measures and has one month to consider whether they would exceed the implementing powers defined in Level 1. If the Parliament passes a resolution stating that the measures are not in conformity, the Commission must re-examine its proposal.**

**The Commission adopts the proposal.**



## 2.2. Operational Structure of CEBS

CEBS was established as an independent committee by a Commission Decision adopted on November 5, 2003. The Decision entered into force on January 1, 2004. On January 20, 2004, the EU Finance Ministers decided that the CEBS Secretariat would be located in London, at least for the next four years.

At the first meeting of CEBS, on January 29, 2004, CEBS members adopted the Charter, and elected the Chair (José María Roldán, Banco de España), the Vice-Chair (Danièle Nouy, Commission Bancaire) and the three other members of its Bureau (Andreas Ittner, Oesterreichische Nationalbank; Helmut Bauer, Bundesanstalt für Finanzdienstleistungsaufsicht; and Kerstin af Jochnick, Finansinspektionen). The role of the Bureau is to advise and assist the Chair 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. Mr Andrea Enria (Banca d'Italia) was appointed as Secretary General of CEBS.

According to the Charter, the Chair is nominated for a period of two years. The Bureau normally also has a two-year mandate, but the first Bureau was elected for a period of three years in order to avoid having the terms of the Chair and the Bureau end at the same time. The Secretary General is appointed for a period of three years.

CEBS' work is supported by a Secretariat, whose staff is provided by member authorities. After working on a 'virtual' basis, the Secretariat opened a permanent office in London in October 2004.

CEBS has five expert groups focusing on different work streams, and one joint task force with the ESCB's Banking Supervision Committee.

### Groupe de Contact

CEBS' principal expert group is the Groupe de Contact, which has a long history of co-operation and information exchange between banking supervisors in Europe. The Groupe's purpose is to promote practical co-operation and the exchange of confidential and non-confidential information between European banking supervisors. The role of the Groupe was acknowledged in the recitals to the First and Second Banking Co-ordination Directives, now consolidated in the proposed CRD. The members of the Groupe are representatives from the competent supervisory authorities.

In addition, the Committee has established expert groups charged with specific mandates.

## Expert Group on the Capital Requirements Directive

The Expert Group on the Capital Requirements Directive has been mandated to review the text proposed by the European Commission for the CRD, including any revisions or additions proposed by the Commission, the Council or the Parliament. The Group will report to CEBS on a timely basis with concerns and proposals, in order to assist CEBS in providing high-level advice to the Commission.

Specifically, CEBS asked the Expert Group as its first tasks:

- to perform an initial high-level review of the draft Directive as a whole, and to identify and report to CEBS at the earliest opportunity on the main areas of policy concern, together with a plan for work in these areas;
- to evaluate the distribution of the draft Directive text between Articles and Annexes; and
- to assess whether the draft Directive leaves appropriate scope for convergence measures.

An evaluation of the distribution of the draft Directive text between Articles and Annexes and of which national discretions might be removed as well as the assessment whether the draft Directive leaves appropriate scope for convergence measures have already been accomplished.

Currently the most important areas of work have covered external credit assessment institutions, advanced approaches in the credit risk (Internal Ratings Based approach) and operational risk (Advanced Measurement approaches) and the further reduction of the national discretions in the directive. The expert group is expected to start working on advice to the Commission with respect to a review of the own funds provisions.

## Expert Group on Common Reporting

Banking groups operating on a cross-border basis within the Single Market are presently required to prepare and submit their supervisory reporting according to different national formats and using different technologies. CEBS aims at a greater commonality of approaches, which should reduce the compliance burden for cross-border groups, while limiting the burden for small, local banks. It should also contribute to removing a potential obstacle to financial market integration.

The implementation of new International Financial Reporting Standards (IFRS) and the new Capital Requirements Directive provide the EU with a unique opportunity to harmonise the data framework, as all competent authorities and banking institutions will need to adapt to new reporting requirements.

The Expert Group on Common Reporting was established after a feasibility study on common EU reporting for the new solvency ratio was presented to CEBS at its meeting on July 1, 2004. The expert group was mandated to finalise a common framework that credit institutions and investment firms can use to report their solvency ratios. The solvency ratio is used by banking supervisors to assess institutions' risks and their capital adequacy. EU capital adequacy rules require credit institutions and investment firms to hold enough financial resources to cover their risks and protect depositors.

The tasks of the Expert Group on Common Reporting include:

- Proposing an XML-based solution to be developed as the basis for the European common framework;
- Developing a taxonomy of financial and reporting-related data with a view to proposing a complete package to the industry for implementing the new solvency ratio;
- Preparing the communication of the new reporting framework and the consultation process with the industry.

## Expert Group on Accounting and Auditing

CEBS' Expert Group on Accounting and Auditing is working on prudential aspects of the new international accounting rules. Its tasks include:

- Helping CEBS to assess accounting and auditing issues from the perspective of prudential supervision, and to decide on appropriate initiatives to influence the overall rulemaking and standard-setting process;
- Monitoring and assessing international and EU developments in accounting and auditing, providing CEBS with a forum for discussing the implications of current accounting and auditing issues, and submitting reports on relevant issues;
- Examining the practical consequences for supervisors, credit institutions and investment firms of the introduction of the international accounting standards (IAS/IFRS), and preparing the participation and contributions of a CEBS observer to the meetings of the Accounting Regulatory Committee (ARC) when the discussion for endorsement of an international accounting standard of particular importance to credit institutions is on the agenda. More

generally, it will assess any relevant implementation issue arising in connection with harmonised accounting and auditing regulations, with the objective of promoting supervisory convergence;

- Providing technical input to the development of international accounting and auditing standards of particular relevance to banking, and preparing comments on relevant papers; and
- Assisting CEBS in providing advice to the Commission on EU legislation in the area of accounting and auditing which is relevant to credit institutions and investment firms.

### **Supervisory Disclosure Task Force**

The Supervisory Disclosure Task Force was established to develop a common framework for disclosing supervisory rules and practices in the EU, as required by the proposed CRD. Article 144 of the CRD identifies four types of information which must be disclosed by supervisory authorities:

- (a) the texts of laws, regulations, administrative rules and general guidance adopted in their Member State in the field of prudential regulation;
- (b) the manner of exercise of the options and discretions available in Community legislation;
- (c) the general criteria and methodologies they use in the review and evaluation referred to in Article 124;
- (d) without prejudice to the provisions laid down in Title V, Chapter 1, Section 2, aggregate statistical data on key aspects of the implementation of the prudential framework in each Member State.

The CRD states that the disclosures should be sufficient to enable a meaningful comparison of the approaches adopted by the competent authorities of the different Member States.

The Supervisory Disclosure Task Force was mandated:

- to determine the elements of supervisory information that should be included in the disclosure framework,
- to construct a framework designed to facilitate meaningful comparisons of approaches across countries, and
- to define the role of CEBS in the implementation of the supervisory disclosure framework.

### **Joint Task Force on Crisis Management**

The Task Force on Crisis Management, which was established jointly with the ESCB's Banking Supervision Committee (BSC), seeks to improve co-operation arrangements for managing financial crises. The Task Force will develop guidance to EU banking supervisors and central banks for dealing with financial crises – whether triggered by individual institutions, banking groups, money and financial markets or market infrastructures – that may have a systemic cross-border impact. The Task Force will also contribute to the development of cross-border operational networks that can provide for timely information-exchange and co-operation between banking supervisors and central banks in financial crisis situations. Finally, the Task Force will provide technical support in the development of exercises for stress-testing EU crisis management arrangements.

In the execution of its tasks, CEBS will aim to work by consensus of its members. Decisions are taken by consensus, except when providing advice to the Commission. In that case, the Committee will strive for consensus, but if no consensus can be reached, decisions will be taken by qualified majority, with each Member country having the same number of voting rights as in the Council, as specified in the Nice Treaty.

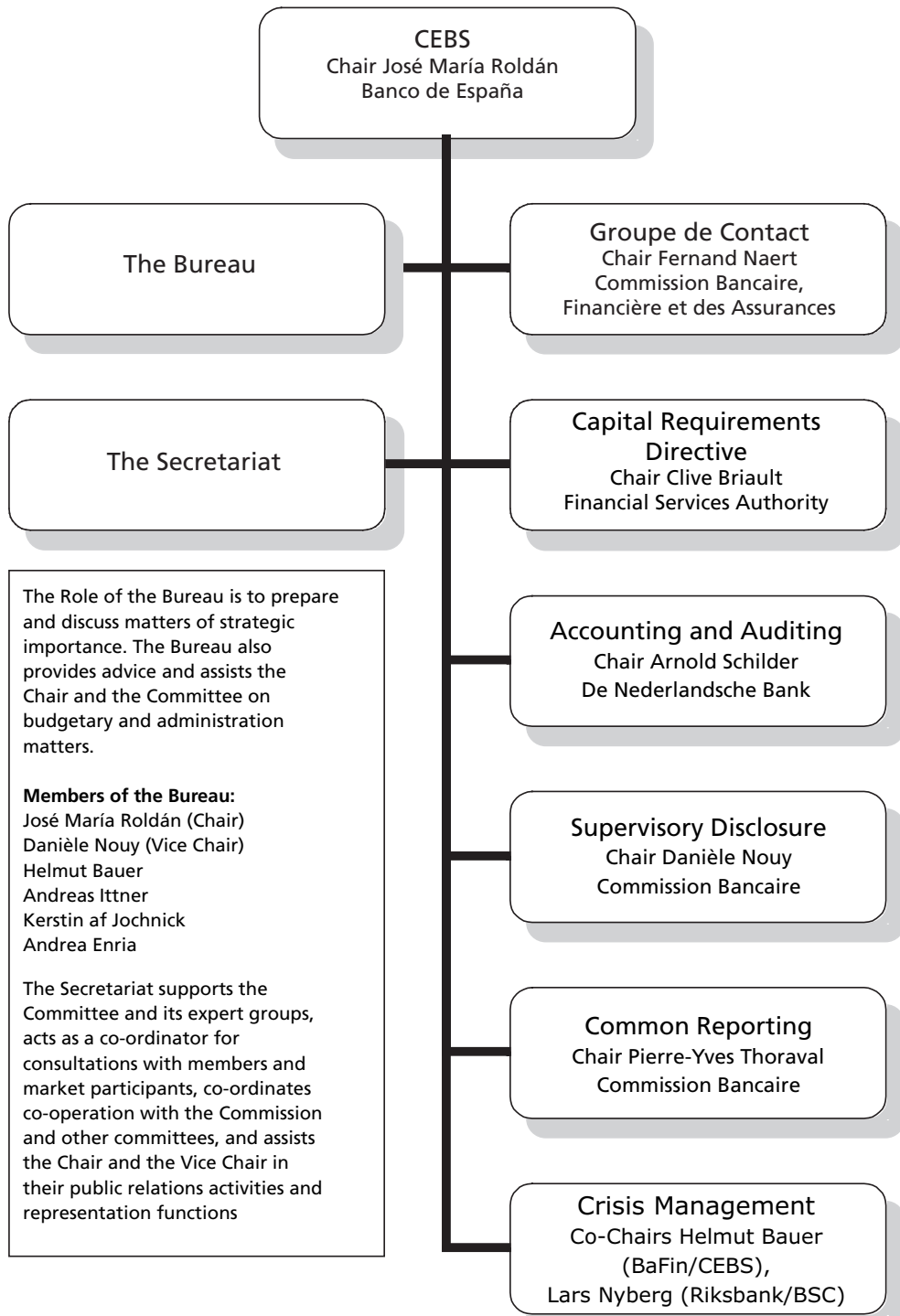
Operational and administrative support to CEBS is provided by CEBS Secretariat. The Secretariat has been organised as CEBS Secretariat Limited, a 'company limited by guarantee' under English law. All EU members and observers from other EEA countries contribute to the budget of CEBS Secretariat Limited, according to a formula based on the number of votes held by each jurisdiction in Council meetings. The Annual Report of CEBS Secretariat Limited along with its financial statement from the date of incorporation (23 June 2004) until end-2004 are attached to this report (Annex 4).

## **2.3. Transparency and Accountability**

There is a long-standing tradition of co-operation between EU banking supervisors, dating back to 1972, when the Groupe de Contact was formed. However, co-operation and information exchange were for the most part directed inwardly, involving only a narrow set of interested parties.

The development of capital adequacy requirements for credit institutions and investment firms marked a change in the participatory scope of the regulatory process. Open consultations and dialogue with a wider set of interested parties have become key ingredients in an approach that seeks to rely as much as possible on industry best practices.

**CEBS' Substructures**



The Lamfalussy approach has made transparency and openness key features of the EU process, for both regulatory and supervisory issues.

CEBS places great importance on the openness and transparency of its work. The Committee's communication strategy emphasises the importance of transmitting information to all interested parties. In its consultations, the Committee actively promotes dialogue, interaction and co-operation with all market participants and end-users.

The CEBS website at [www.c-ebs.org](http://www.c-ebs.org) was launched at an early stage of CEBS' operation, and has served as a primary method of communication. The content of the website is updated regularly. Interested parties can keep up-to-date with CEBS news and events by joining an e-mail alert mailing list. To date, the news alert function has attracted well over a thousand subscribers. All of the documents related to CEBS' role and tasks, including the Committee's work programme, consultation packages, press releases, speeches and other publications, have been posted on the website.

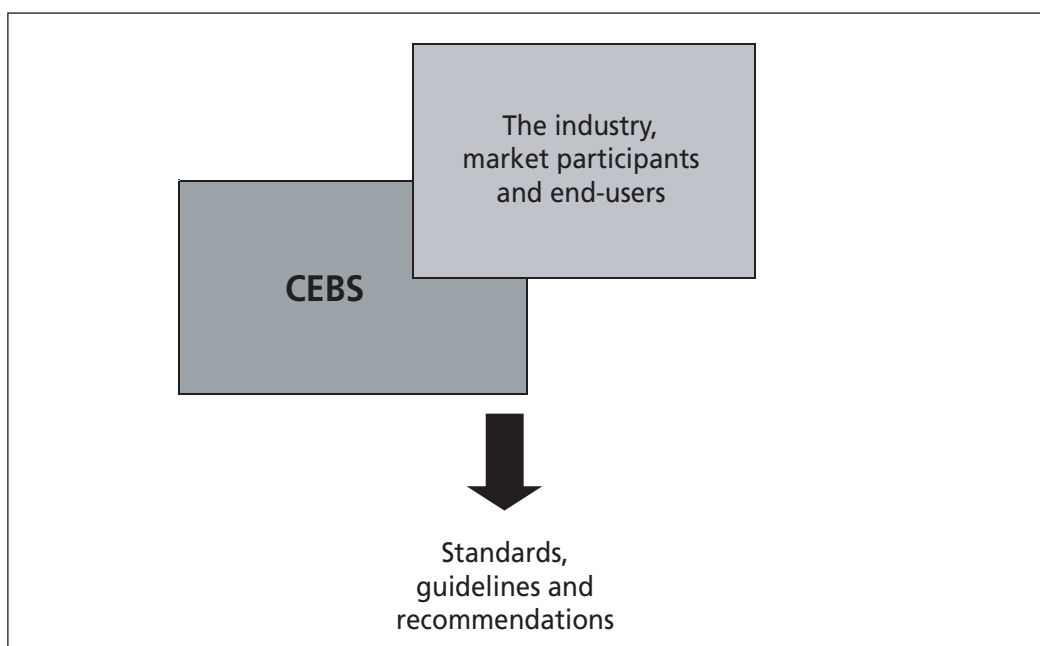
The Chair of CEBS reports to the European Parliament and also, when requested, to the Council. CEBS maintained strong links with the Banking Advisory Committee (BAC), and will continue to do so with the European Banking Committee (EBC), which replaced the BAC. CEBS also reports on supervisory convergence and on general strategically important issues to the Financial Services Committee (FSC) and to the Financial Stability Table of the Economic and Financial Committee (EFC).

CEBS reports regularly to the Commission, the European Parliament, the EBC, the FSC and the EFC on its progress in achieving supervisory convergence and in meeting its main priorities and challenges. Regular reporting promotes transparency and accountability, and should also enable the Council, through the FSC, to form a clearer and more up-to-date picture of barriers to further convergence. In this way, regular reporting may help to identify potential areas for improvement.

### 3. Consultation process

CEBS is required by its Charter to conduct public consultations with market participants, consumers and end users. CEBS has adopted a policy of consulting with the public on its activities. Public consultation assists the Committee in analysing regulatory issues and identifying possible solutions, by allowing it to benefit from the expertise of market participants and other interested parties. Consultation also enhances the openness and transparency of its work, helps to foster dialogue between interested parties, and ultimately promotes understanding of the Committee's work and helps develop a consensus among interested and affected parties as to the appropriateness of regulatory and supervisory policies.

CEBS has issued a statement on its consultation procedures. The statement describes the steps that will be followed in all of CEBS' formal consultations. A draft version of the Public Statement was itself the subject of a public consultation in the summer of 2004. Most of the comments received from market participants, consumers and end-users of banking services were adopted in the final consultation procedures.



The Committee generally solicits comments from the full range of interested parties, including market participants, consumers, other end-users, and their respective associations. However, the Committee may in certain circumstances choose to target a consultation exclusively at market participants and their associations, for example when externally imposed timeframes do not permit full consultation.

CEBS will publish an annual work programme, indicating for each topic on the programme whether a full or targeted consultation is planned. For work in the area of advising the Commission, the choice will depend on the deadlines imposed by the Commission. For other work, such as the development of guidelines, recommendations and standards in the field of banking supervision, full consultations are envisaged.

CEBS will normally allow three months for responses to each formal consultation. CEBS will conduct a second consultation if the responses to the first consultation reveal significant problems or result in very substantial changes from the original proposal on which the consultation was based. The second round of consultation will normally last for one month.

The standard consultation procedures and timelines may be amended in certain circumstances, for example if the Commission sets shorter deadlines for work by CEBS.

In addition to the formal consultation process, CEBS will use other methods of dialogue and interaction with market participants and end-users to obtain input for its consultation papers. These methods may include panels, hearings, workshops, questionnaires and informal contacts with market participants.

#### Who is consulted?

The Committee will generally:

- (i) Target the full range of interested parties, including market participants (e.g. credit institutions, investment firms, etc.), consumers, other end-users as well as their representative associations;

- (ii) Make consultation proposals, related documents and key dates for the consultation widely known and available through appropriate means, in particular the Internet;
- (iii) Consult at national, European and international levels.

### **Consultative Panel**

CEBS has established a Consultative Panel consisting of market participants, consumers and end-users. The Panel acts as a sounding board for CEBS on strategic issues, assists in the performance of CEBS' functions and helps ensure that the consultation process functions effectively.

#### **CEBS Consultative Panel:**

- Expresses views on CEBS' work programme;
- Comments on the way in which CEBS is exercising its role and, in particular, on the adequacy of consultation with market participants, consumers and end-users;
- Assists CEBS in setting priorities;
- Alerts CEBS to regulatory inconsistencies in the Single Market and suggests areas for Level-3 work;
- Informs CEBS on major financial market developments.

The Consultative Panel is composed of 19 members. Thirteen members are appointed by CEBS, based on the proposal of the Bureau which is in turn based on suggestions from CEBS' members. The European Banking Industry Committee (EBIC) and the Forum of User Experts in the Area of Financial Services (FIN-USE) each contribute two members, and the European Consumers' Organisation (BEUC) and the Union of Industrial and Employers' Confederations (UNICE) each contributes one member. The Panel has appointed Mr. Freddy van den Spiegel, a representative of the banking industry, as its chair.

Panel members are appointed in a personal capacity and should be in a position to speak with independence and authority. They are selected for their extensive experience in the field of European banking, their ability to understand the technical issues involved in bank supervision and prudential regulation and their ability to take a broad strategic view on the issues facing the European Banking Market and the Single Market for Financial Services.

The Panel held its first meeting in October 2004, at which it was agreed that CEBS should concentrate on prudential issues, with a principal focus on the implementation and enforcement of the new framework for capital adequacy of credit institutions and investment firms – and in particular on home-host issues, the Supervisory Review Process, the validation of internal approaches for credit and operational risk and national discretions.

#### **Members of the Consultative Panel 2004:**

**Freddy van den Spiegel**, Fortis (The Chair)  
**Hugo Banziger**, Deutsche Bank  
**Albertus Bruggink**, EBIC (Rabobank)  
**Riccardo de Lisa**, FIN-USE  
**Richard Desmond**, UNICE  
**Richard Gossage**, Royal Bank of Scotland  
**Carl-Johan Granvik**, Nordea  
**Siegfried Jaschinski**, State Bank of Baden-Württemberg  
**Benoît Jolivet**, FIN-USE  
**Michael Kemmer**, EBIC (HVB Group)  
**Roman Maszczyk**, PKO BP SA  
**José María Méndez Álvarez-Cedrón**, Spanish Federation of Savings Banks  
**João Salgueiro**, Portuguese Banking Association  
**Frédéric Oudea**, Societe Generale  
**Herbert Pichler**, Austrian Federal Economic Chamber  
**Franco Spinelli**, Banca Bipop Carire  
**Antimos Thomopoulos**, National Bank of Greece  
**Manfred Westphal**, BEUC  
**Klaus Willerslev-Olsen**, Danish Bankers Association



### 3.1. Consultations Conducted in 2004

CEBS published three consultation papers during its first operational year. The first consultation paper presented guidelines for consultation practices, the second presented high-level principles on outsourcing financial services and the third focused on the application of the Supervisory Review Process under Pillar 2.

#### Public Statement on Consultation Practices

CEBS published its first consultation paper, "Draft Public Statement of Consultation Practices" (CP01), in April 2004. The Public Statement elaborated on the consultation requirements and procedures outlined in the Commission Decision establishing CEBS and in CEBS' Charter. The Committee invited market participants, consumers, end-users and other interested parties to comment on the proposed consultation procedures and timelines. The consultation period for CP01 ended on July 31, 2004 and a revised version of the Public Statement has been published on the CEBS website. Most of the comments received during the consultation process were adopted by the Committee in the final version.

The main issues on which comments were received included the timeline for the consultation process, clauses in the Public Statement that give CEBS discretion to vary consultation procedures, consultation on supervisory co-operation, the relative weighting of responses, translations of consultation papers, and the work programme.

CEBS decided to specify 'standard' timelines in its final consultation procedures, which it will follow as a general rule. The standard timeline for responses will be three months for initial consultations and one month in the event of a second round of consultation. However, these timelines may have to be shortened in certain circumstances; for example, when the Commission sets a tighter deadline for advice by CEBS. Consultation periods will be announced well in advance, so that market participants, including end-users, can prepare for them. The working language for both consultation papers and responses is English.

CEBS has decided that work on guidelines, recommendations, standards and general advice relating to supervisory co-operation will be subject to consultation. However, actual supervisory practice and the exchange of information concerning specific institutions, as ongoing work, will not be subject to consultation, for reasons including confidentiality.

#### Standards for outsourcing

CEBS published its second consultation paper, "The High Level Principles on Outsourcing" (CP02), in April 2004. This paper built on work that has been underway since 2002, when European banking supervisors began developing high level principles that could help promote convergence of supervisory approaches and practices on outsourcing. It was agreed that these principles should be based on currently prevailing practices and on the common policy elements that had been elaborated to date in the various Member States. The initial consultation period for CP02 ended on July 31, 2004.

CEBS proposed a three-tier classification of business activities:

1. Strategic or core management responsibilities cannot be outsourced;
2. Non-strategic but material activities, which should be pre-notified to the supervisory authority prior to outsourcing; and
3. Non-strategic and non-material activities, which do not have to be pre-notified. However, the institution remains responsible for ensuring that any supervisory guidelines applying to these activities are still met.

The comments received during the initial consultation period focused mainly on the definitions used in the paper. The concept of 'outsourcing' itself was seen as needing some clarification. The boundary between outsourcing and purchasing was well received, although an even more precise definition was requested. There were also some concerns about the boundary between intra-group and third-party outsourcing, and additional clarification was requested on the definition of strategic and core-activities as well as the definition of risk management. Many commenters also requested a clearer definition of material vs. non-material activities. Finally, the industry questioned the rationale for the pre-notification procedure, which it considered a source of administrative burden and potential legal uncertainty.

Several other international organisations are currently developing standards for outsourcing financial services. Some respondents to CP02 raised the concern of possible inconsistencies between CEBS' proposals and the work published by CESR on the MIFID (Markets in Financial Instruments Directive) Level-2 advice. These respondents recommended closer alignment, arguing that financial groups consisting of credit institutions, insurers and investment firms need a single definition and a single standard. Similar proposals have been made by CEBS in its reaction to the MIFID consultation.

CEBS is considering the need to co-ordinate its approach to outsourcing with similar exercises being conducted by CESR, CEIOPS and the Joint Forum at the global level. A second round of consultation is envisaged following further work on this issue.

### **Supervisory review process**

CEBS published its third consultation paper, "The Application of the Supervisory Review Process under Pillar 2" (CP03), in May 2004. The consultation period ended on August 31, 2004. This consultation paper was developed over a long period of time, during which EU supervisors consulted with their national industries to get a clear understanding of credit institutions' and investment firms' views on the new Basel II capital rules and the application of supervisory review.

CEBS decided to release the paper before the proposed text of the CRD had been finalised by the Commission, considering it important to consult with interested parties at an early stage in order to encourage dialogue and promote transparency between supervisors and financial institutions.

The purpose of the Supervisory Review Process is to ensure that institutions have adequate capital to support all the risks in their business and encourage institutions to develop and use better risk management techniques in monitoring and measuring risks. Pillar 2 is a key element of the Basel II framework (see Graph 1).

The consultation paper sets forth a general overview of the approach which has been developed by CEBS for implementing the Supervisory Review Process and its two main components: the Internal Capital Adequacy Assessment Process (ICAAP) – in which the institution evaluates its capital adequacy – and the Supervisory Review and Evaluation Process (SREP) – in which the supervisor reviews the ICAAP and makes its own assessment of the institution's capital adequacy.

The key principle underpinning the ICAAP is that "banks should have a process for assessing their overall capital adequacy in relation to their risk profile and a strategy for maintaining their capital levels." This principle is incorporated in the proposed CRD, which states that "institutions should assess and maintain on an ongoing basis the amounts, types and distribution of internal capital that they consider adequate to cover the nature and level of the risks to which they are or might be exposed." The consultative paper lays out the process for assessing how much capital the institution needs, including a sound capital assessment and a comprehensive assessment of risks.

The key principle underpinning the SREP is that "supervisors should review and evaluate institutions' internal capital adequacy assessments and strategies as well as their ability to monitor and ensure their compliance with regulatory capital ratios. Supervisors should take supervisory action if they are not satisfied with the result of this process." The consultative paper lays out the main features of a rigorous process, including a review of the adequacy of risk assessment, an assessment of capital adequacy, an assessment of the institution's control environment, and a review of the institution's compliance with minimum standards laid out in the CRD. The paper notes that supervisory authorities should have strong risk assessment capabilities, in order to form their own well-informed judgement as to what constitutes an adequate level of capital in relation to an institution's risk and control profile.

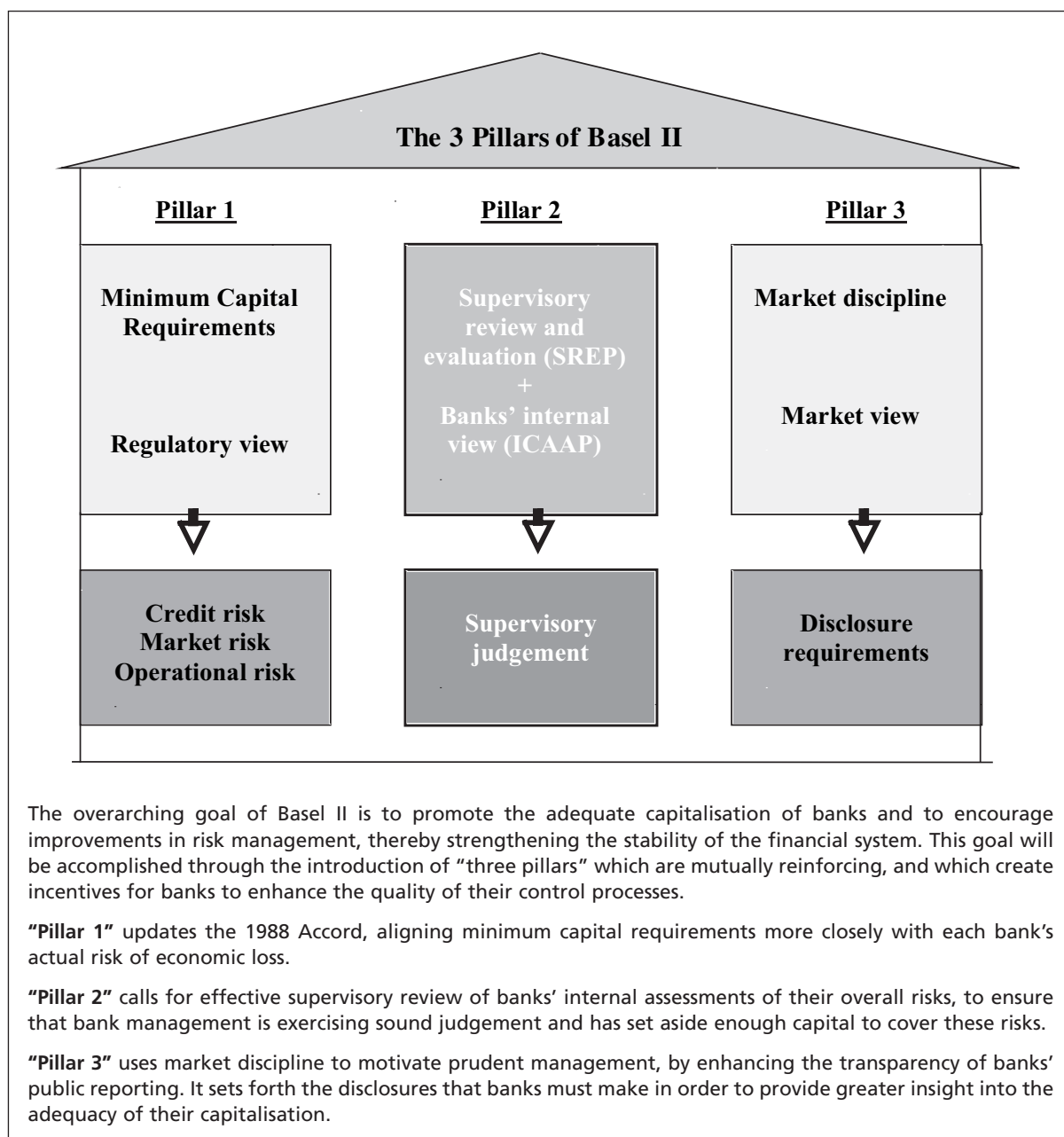
The initial consultation paper on the supervisory review process noted that the proposed CRD was still in its early stages, and that CEBS' proposed guidelines would need to be revisited in the light of subsequent developments. Since the initial consultation, CEBS has further developed its thinking and drafted a paper for a second round of consultation. The paper has been expanded to include new proposals that CEBS has been considering over the past year. CEBS stresses that the proposals set forth in the second consultative paper will need to be reviewed when the new legislation is formally adopted.

### **CEBS' advice to the Commission in 2004**

The proposed Capital Requirements Directive contains a large number of regulatory options and discretions which may be applied on the basis of national circumstances. CEBS has identified more than 140 options. Forty of these options were granted to supervised institutions in order to allow them sufficient flexibility in implementing new approaches.

During 2004, CEBS conducted an intense analysis of how the remaining options are likely to be exercised in Member States, and how their number could be reduced in order to enhance the level playing field while still providing adequate flexibility to accommodate the needs of local markets.

CEBS' analysis was submitted to the Council Working Group, along with suggestions as to which discretions might be removed from the proposed Directive. CEBS continues to work on finding ways to remove further discretions. As most of the discretions are contained in the Annexes of the proposed CRD, it will be possible to amend the Directive using comitology procedures after final approval of the Directive by the Council and the European



Parliament. CEBS will also continue to work on supervisory convergence of the use of national discretions, leading in due course to possibilities for further reduction.

The Consultative Panel agreed to support CEBS in finding ways to reduce the number of options and identifying national discretions that are expected to have a significant impact on cross-border banking and level playing field.

In response to a request from the Banking Advisory Committee, CEBS proposed to the European Commission a first set of technical advice on the use of prudential filters in the context of the new International Financial Reporting Standards (IFRS) and the proposed Capital Requirements Directive. Starting on January 1, 2005, all European listed companies are required to publish their consolidated financial statements using IFRS rules. These accounting developments represent a significant change, and they may affect the magnitude, quality and volatility of financial institutions' regulatory capital. Since accounting numbers remain the basis for computing prudential ratios, this change will also have an impact on the composition of own funds and therefore on the solvency ratios reported by credit institutions and investment firms.

CEBS suggested adopting certain prudential adjustments ('prudential filters') in calculating the own funds of institutions that use IFRS, in order to avoid changes which are inappropriate from a prudential point of view.

The intent is that the final advice from CEBS will be considered at a later stage by the Commission for incorporation into the Directive via the appropriate legislative procedure (e.g. making changes in the Annexes of the CRD), following a prior call for advice by the European Banking Committee and full industry consultation. In the meantime, national supervisors will apply the guidelines on prudential filters on a best-efforts basis to institutions which use IFRS for their prudential returns. The guidelines will be implemented in accordance with national procedures. For consistency purposes, national authorities may consider applying the guidelines to institutions that follow national accounting principles, to the extent that those national principles are similar to IFRS.

In order to achieve a common level playing field across Europe and G10 countries, CEBS proposals have remained in line with the Basel Committee's work on the same subject. The objective of the prudential filters introduced by CEBS has been to maintain the current definition - and quality - of regulatory capital for those institutions applying IFRS for prudential purposes.

In its first year of activity, CEBS has not always been able to fulfil the commitment made in the Charter to conduct public consultations on each piece of advice to the Commission. The tight timeframe of the legislative process and the short deadlines imposed in the calls for CEBS' advice did not allow for a proper consultation, for instance, in the work aimed at reducing the national discretions in the CRD and for the advice on prudential filters. In such cases, CEBS has tried to obtain input on its work by involving the Consultative Panel.

Similarly, the call for advice on cross-border mergers (see section 4.1) received in January 2005 does not allow for a full three months public consultation. CEBS will rely on public questionnaires and comments from the Consultative Panel to ensure a proper involvement of interested parties.

Each year, CEBS publishes a work programme which identifies the priority areas on which CEBS will focus its attention in the coming year. It is divided into three work areas, corresponding to the main tasks assigned to CEBS in the Commission's Decision establishing CEBS and in the CEBS Charter:

- (i) Advice to the Commission,
- (ii) Convergence of supervisory practices, and
- (iii) Co-operation and information exchange.

Under each work area, the work programme lists the individual work streams identified as high priority for the coming year. The priorities are defined with the assistance of the Consultation Panel.

The main focus of the Committee's work in 2005 will be on Level 3 work, i.e. on ensuring consistent implementation of Community legislation, convergence of supervisory practices and an effective process for supervisory co-operation in an increasingly integrated market for financial services. EU institutions have emphasised the need to make progress on convergence of supervisory practices and on consistency in the implementation of EU legislation. Supervisory convergence, co-operation and information exchange have also been called for from a financial stability perspective. CEBS has taken these objectives into account in its planning. The work programme also reflects the conclusions of the Lamfalussy report, which highlighted the need for faster and more flexible legislation and enhanced co-operation between regulators in order to ensure convergent implementation and application in Member States. The work programme includes several work streams initiated in 2004 in response to the strong demand for convergence of banking supervisory practices and in relation to the finalisation of the CRD.

The Work Programme is published on the CEBS website, in order to raise awareness on the work that CEBS is undertaking. Publication of the work programme also enables all interested parties to prepare well in advance for CEBS' public consultations.

In order to facilitate the participation of interested parties, a timeline for CEBS work streams is published with the work programme. The timeline is updated as needed in order to highlight when CEBS output is scheduled to be submitted to consultation and finalised throughout the year. This should also favour a better participation in consultation processes and an open dialogue with the industry and end-users of financial services.

### 4.1. Advice to the Commission

In the first quarter of 2005, CEBS received new calls for advice from the Commission, relating to the process for supervisory approval of qualifying shareholdings in banks and the issuance of e-money by entities outside the typical providers of financial services. CEBS has also begun preliminary work on draft mandates on the harmonisation of deposit guarantee schemes in the EU and the definition of own funds.

#### Mergers and acquisitions

As a result of the informal ECOFIN meeting in Scheveningen on September 11, 2004, the Commission was asked to study possible obstacles to cross-border mergers and acquisitions in the banking sector. The Commission undertook to consider the impact of supervisory rules in financial services directives that could inhibit cross-border consolidation. The Commission also agreed to examine other potential obstacles to cross-border consolidation across all financial sectors.

As a first step, the Commission prepared a document on cross-border mergers and acquisitions in the banking sector. The document outlined five options for ensuring that Article 16 of the proposed CRD, on qualifying holdings in credit institutions, does not improperly curb mergers and acquisitions in the EU.

The mandate received by CEBS focuses on the criteria used by national authorities to block the acquisition of a qualifying shareholding when they believe that the acquisition could threaten the "sound and prudent management" of the target institution. CEBS has also been asked to consider the workability of mutual recognition agreements for suitable shareholding. CEBS' advice would be welcome also in three other areas: the possible review of thresholds of which supervisors must be informed of a qualifying shareholding and time limits within which they have to respond; the introduction of transparency provisions on negative decisions; and the establishment of new out-of-court redress mechanisms.

As the deadline set by the Commission does not allow a full consultation, CEBS will prepare its advice using other tools, such as public questionnaires and Consultative Panel, to consult with market participants. The deadline for the technical advice is May 30, 2005.

## **E-money**

CEBS has received a call for advice from the Commission asking for technical advice on the review of Article 8 of Directive 2000/46/EC on the taking up, pursuit of and prudential supervision of the business of electronic money institutions (E-Money Directive). Article 8 of this Directive provides the possibility for competent authorities to waive the application of the Directive under certain circumstances, which relate mainly to potential issuers of e-money whose principal activity is not the provision of banking or payment services, such as mobile phone operators and other "hybrid" issuers of e-money.

The call for advice is based on the assumption that these companies would benefit if the scope of application of these waivers were similar across the EU. CEBS is asked to provide advice on whether and how the optional waiver article has been implemented in national law, how similarly the waivers have been implemented in practice, what information exchange arrangements between supervisors might be needed, and whether the thresholds of Article 8 are set at an appropriate level.

The deadline for submitting this advice to the Commission is the end of June. Due to the tight timeframe imposed by the Commission, CEBS cannot follow a full consultation process in preparing this advice. CEBS will use other means, such as the Consultative Panel, to obtain input from market participants.

## **Own funds**

At the meeting of the Banking Advisory Committee on November 24, 2004, BAC members asked the Commission to undertake new work on the definition of own funds. As this has obvious prudential aspects, the Commission will call on CEBS to provide advice on the quantity and quality of own funds required to deliver an acceptable degree of consumer protection and financial stability.

This will be a long term process that the EU intends to carry out in parallel with the Basel Committee. At this stage CEBS will conduct a survey of the current rules of own funds across the Member States as well as an analysis of the innovative capital instruments recently introduced by credit institutions and investment firms. CEBS will assess the impact of these instruments with regard to the quality of the regulatory capital.

## **Deposit guarantee schemes**

At the same November meeting, BAC members called on the Commission to conduct a wide-ranging review of the Directive on Deposit Guarantee Schemes (94/19/EC). The review will focus on the practical workings of deposit guarantee systems.

In its draft call for advice the Commission is seeking the technical advice of CEBS on a number of issues to feed into its review. CEBS has been asked to consider the division of responsibilities and information-exchange arrangements between home and host supervisory authorities on deposit guarantee issues, and to provide information on crisis management procedures.

Other issues that CEBS has been asked to consider include the minimum level of protection, 'topping-up' arrangements and methods for financing deposit insurance schemes.

## **4.2. Convergence of Supervisory Practices**

### **Common reporting for the new solvency ratio**

In January 2005, CEBS launched a formal consultation on a common reporting framework that credit institutions and investment firms will use to report their solvency ratios under the CRD. The consultation period for common reporting of the solvency ratio closed at the end of April 2005. The consultation on reporting based on IFRS will close in July 2005.

These proposals respond to requests from the banking industry for improvements in reporting procedures. They have been addressed by the Commission and discussed at the ECOFIN Council, which encouraged CEBS to work on this issue.

Groups operating on a cross-border basis within the Single Market are currently required to prepare and submit supervisory reports using different national formats and different technology platforms. Greater commonality of approaches will aim at reducing their compliance burden and limiting the burden of change on small, local institutions. This should contribute to removing a potential obstacle to financial market integration.

Common reporting will also make it easier for supervisors to co-operate and exchange information. This will help to reduce differences in implementation and contribute to a more level playing field across Europe. CEBS will seek to ensure that the common reporting framework is applied in all Member States.



Under the new framework, the basic elements to be reported will be similar throughout the EU. However, most institutions will not be required to report the entire set of items included in the prudential and financial reporting framework. Each national supervisor will decide how much detail it will require, as a function of the practices and the degree of sophistication of the institutions in its national market. The inclusion of the entire set of potential data elements in a common framework will ensure that when the same information is requested by different national supervisors, the information will be requested in the same format. This will reduce the compliance burden for reporting institutions.

The implementation of the CRD and the adoption of IFRS provide the EU with a unique opportunity to harmonise the data framework, as all competent authorities and banking institutions will need to adapt to new reporting requirements. The adoption of a common technical protocol based on the XML/XBRL language will allow institutions to take full advantage of the common reporting framework, and is recommended by CEBS.

CEBS also plans to provide a complete XML/XBRL coding and taxonomy for reporting the solvency ratio. This is not intended to prejudice national decisions about the technical processes used to transmit data to supervisors. However, XBRL is regarded in several countries as a future reporting standard, for supervisory as well as financial and other reporting.

### **Accounting and auditing**

The adoption of International Financial Reporting Standards (IFRS) in the EU is a major reform that will significantly affect the way that business is conducted. It should contribute to increasing financial market integration. However, the issuance of IFRS raises a number of supervisory issues and is a suitable work topic for CEBS.

CEBS will conduct work aimed at supporting common application and understanding of some components of the IFRS for supervisory purposes. This work will cover areas such as the use of the fair value option, loan accounting and provisioning.

In April 2005 CEBS published the second of its public consultations on prudential reporting requirements for credit institutions. The consultation focuses on the development of a standardised consolidated financial reporting framework for credit institutions.

The project aims at developing a standardised consolidated financial reporting framework for credit institutions that is consistent with international accounting standards (IAS/IFRS). It is intended for use by EU supervisory authorities when they ask credit institutions to submit consolidated financial information prepared in accordance with IAS/IFRS.

The work is motivated by the absence in IAS/IFRS of standardised reporting formats, which are important to supervisors to enable them to compare information. CEBS does not intend to impose additional reporting requirements, but rather to create a common financial reporting framework that will reduce administrative burden on cross-border banking groups and contribute to removing a potential obstacle to financial market integration. The framework's objective is to streamline the reporting process for supervisory purposes and thereby to increase the cost-effectiveness of supervision across the EU.

There is currently a wide diversity in the supervisory practices of European authorities of how financial information is used for prudential purposes. This diversity of supervisory approaches makes it necessary to adopt an approach to financial reporting which is at the same time both flexible and harmonised. CEBS believes that this has been achieved in the proposed standardised reporting framework, which allows each national authority to decide what financial information it will require for prudential purposes. Each supervisor is free to select from the framework those data that it considers useful in carrying out its supervisory mission, but has the option of extending the standardised reporting framework with additional information considered necessary at the national level.

The project benefited from feedback from industry at both the national and European level. In general, credit institutions reacted positively to the project even though some concerns were raised; such as the need to remain consistent with IAS/IFRS.

The framework will also be linked with the framework for common reporting of the solvency ratio in order to avoid undue costs and inconsistencies in supervisory reporting.

### **Supervisory review process**

In May 2004, CEBS published a consultation paper, "The Application of the Supervisory Review Process under Pillar 2", laying out a general overview of the approach that will be taken to implementing Pillar 2 of the revised international capital framework (Basel II) and the corresponding provisions of the CRD. The paper reflected the thinking of European banking supervisors. Its aim was to create clear guidelines which would promote convergence, and to underpin the legal texts being developed in the CRD.

In the second quarter of 2005, CEBS will publish a new consultation paper that will reflect the responses received during the first consultation and the evolution of the Committee's own thinking.

CEBS is adopting many of the suggestions it received. The paper is being expanded to include guidelines on the general application of internal governance, and specifically how internal governance applies to an institution's Internal Capital Adequacy Assessment Process (ICAAP). It will also include more detail on how the dialogue between institutions and their supervisors should be handled, and how supervisors will use their internal risk assessment systems as part of the Supervisory Review and Evaluation Process (SREP). The guidelines will be based on a combination of accepted best practices and the development of agreed new sound practices relating to the new elements of Basel II and the CRD.

The consultation paper provides an overview of the guidelines, but more detail will need to be added later to flesh out the practical review and evaluation processes and the individual risks to which institutions may be exposed. CEBS is also considering whether to provide specific guidance for small institutions.

The paper should be read in conjunction with the upcoming consultation paper on supervisory co-operation on cross-border groups (CP07), as it will shed more light on how interaction between home and host supervisors in the supervisory review process will work in practice.

CEBS plans to publish the final guidelines by the autumn of 2005. This should coincide with publication of the final texts of the CRD, thus providing the industry a full package of measures at Levels 1, 2 and 3. It is also timed to allow one full year before the first elements of the Directive take effect.

The proposals in the second consultation are addressed to both supervisory authorities and institutions, with an emphasis on the dialogue and interaction between the institution's capital adequacy assessment and the supervisor's review and evaluation. The supervisory processes have been set out in great detail in order to ensure transparency and to promote convergence of supervisory practices.

The consultation paper stresses that an institution's management bears primary responsibility for developing and managing its risk management processes and ensuring that it holds sufficient capital to meet both regulatory and internal capital targets. The task of the supervisory authority is to review and validate the institution's internal processes and, if needed, to require the institution to hold regulatory capital in excess of the minimum Pillar-1 requirements.

The CRD makes it clear that all institutions should have an in-house system for capital adequacy assessment, whether they are large or small, complex or less complex, credit institutions or investment firms. At the same time, the guidelines stress that the intensity and detail of the dialogue should be proportional to the systemic importance, nature, scale and complexity of the institution.

The new set of guidelines will form the core of a compendium of guidance for institutions and supervisory authorities on how to approach their obligations under the banking Directives. Future chapters will include the guidelines on home-host relations mentioned above, and guidelines on organisation and controls including outsourcing, and disclosure. These guidelines are expected to enhance the level playing field in the EU under the new capital regime.

### **Validation of AMA and IRB approaches**

The Basel II framework allows institutions to use more risk-sensitive approaches to calculate their capital requirements for credit risk and operational risk. The most sophisticated approaches permitted in Basel II – the Internal Ratings Based Approach (IRB) for credit risk and the Advanced Measurement Approach (AMA) for operational risk – allow institutions to use their own estimates of risk parameters such as the probability of default (PD) of an obligor, loss given default (LGD), and credit conversion factors (CCF). These estimates are inserted into a formula – either provided by the supervisor or generated by the institution – which is used to calculate the institution's capital requirements.

The accuracy of the resulting capital requirements depends on the precision of the estimated risk parameters. The Basel II framework requires supervisory authorities to review how an institution estimates these parameters, and to grant it permission to use the advanced approaches for regulatory purposes only if the supervisor is satisfied that it meets certain minimum requirements for the use of these approaches. CEBS is currently developing a common set of quantitative and qualitative minimum requirements for the CRD.

Article 129, section 2 of the draft CRD grants new responsibilities and powers to the 'consolidating supervisor', including a role in considering applications from cross-border groups to use the IRB and AMA approaches. In particular, all competent authorities included in the supervision of a parent entity and its subsidiaries are directed to work together to decide whether to grant the permission sought and to determine the terms and conditions, if



any, to which the permission should be subject. If within six months a joint decision is not reached, the consolidating supervisor will take the responsibility of making its own decision for the whole group.

This is one of the most novel elements that the CRD proposes to introduce into the relationship between home and host supervisors. CEBS is currently developing additional guidance on co-operation between national supervisors under Article 129, and on minimum requirements concerning the content and the review of IRB and AMA applications. This guidance will include, for example, exactly when an application can be considered as being complete (triggering the six-month period), in which language the application should be made, and what kind of documentation will be required.

CEBS' final product will be guidelines on the implementation and validation of the AMA and IRB approaches, which will be submitted for public consultation in mid-2005.

### **External Credit Assessment Institutions (ECAIs)**

The proposed framework for capital adequacy envisages the use of ratings generated by external credit assessment institutions (ECAI) in assessing the credit risk of counterparties and calculating capital requirements under the standardised approach.

The framework includes a recognition process for ECAIs. Competent authorities are to recognise an ECAI as eligible only if they are satisfied that the ECAI's assessment methodology complies with requirements relating to its objectivity, independence, and ongoing review and transparency; and that the resulting credit assessments meet requirements of credibility and transparency.

CEBS is developing general principles for ECAI recognition, and is working to identify the type of information that would be required to assess whether such principles are fulfilled. It will also develop a common approach for assessing ECAIs' compliance with the requirements on an ongoing basis, and for dealing with ECAIs that fail to meet the requirements. Finally, CEBS will develop general principles for mapping credit assessments to risk weightings.

In 2004, CESR was asked by the Commission to provide technical analysis and advice on various issues regarding credit rating agencies. The call for advice explicitly directed CESR to work in collaboration with CEBS on the ECAI recognition process as set forth in the CRD. CEBS has participated as an observer on the CESR task force on credit rating agencies, providing insights into the main features of the CRD requirements and highlighting possible gaps or overlaps between the CESR approach and the scope of the CRD.

### **Supervisory disclosure**

Article 144 of the proposed CRD requires supervisors to disclose the texts of laws, regulations, administrative rules and general guidance adopted in their Member State in the field of prudential regulation, the manner in which they exercise the options and national discretions available in EU legislation, the general criteria and methodologies used in the Supervisory Review and Evaluation Process under Pillar II, and aggregate statistical data on key aspects of their implementation of the prudential framework.

The purpose of Article 144 is to provide convenient access to information and a comprehensive overview of the supervisory and regulatory framework in Europe, and to facilitate meaningful comparisons of the approaches adopted by competent supervisory authorities

CEBS has designed a common European framework and templates for supervisory disclosure. The framework will be implemented by CEBS and the national authorities in charge of the supervision of credit institutions and investment firms.

In March 2005, CEBS published a consultative paper laying out guidelines for implementing the framework. The framework itself will be implemented by year end 2006 as a target date for the qualitative information, and by mid-2008 for the statistical data, recognising that some of the intended content may not yet be available at that time.

The proposed framework will make it easier to compare national texts that implement the proposed CRD, and to compare the ways in which Member States exercise the options and national discretions available to them in the CRD. In addition, the framework will enable institutions to compare the criteria and methodologies that supervisors use in evaluating and reviewing them. Finally, it will provide aggregate statistical data on key aspects of the implementation of the CRD.

The framework is intended to make supervisory practices more transparent. This should promote the legitimacy and credibility of supervisors from the perspective of the institutions that they supervise.

The need for transparency is all the more pressing in the context of increasing integration of European financial markets in Europe, which requires consistent implementation of EU legislation and convergence of supervisory practices. CEBS recognises that supervisory disclosure promotes sound governance and is a powerful tool for convergence of supervisory practices across Europe.

Disclosures will be accessible via the Internet, using both the CEBS website and national websites, which will be linked to each other. The framework is based on a common format, consisting of a series of simple and similar information tables in standard formats which will be posted on websites.

The proposed framework will be subject to change, to reflect the final outcome of other CEBS work streams, the final version of the CRD and the feedback from the consultation on the framework.

A demonstration of the full functionality of the framework is available on the CEBS website at [www.cebs.org/SD/SDTF.htm](http://www.cebs.org/SD/SDTF.htm). The information on the CEBS website will be displayed in English. Information on the national websites of non English-speaking countries will be available in English on a best-efforts basis.

### **4.3. Co-operation and Information Exchange**

#### **Co-operation between home and host supervisor**

There is a long-standing tradition of co-operation and information-sharing between European banking supervisory authorities. While these arrangements have worked well up to now, the introduction of the CRD and the ongoing evolution in the structure of banking groups and systems across the EU create a need for strengthened coordination and co-operation between supervisors.

As the European banking system becomes more integrated, the existence of subsidiaries or branches with significant or even systemic importance to the local markets in which they operate is becoming more prevalent. This is already a feature in a number of Member States, and in particular within the new Member States.

Large cross-border groups have complained about the general burden of dealing with many authorities instead of one, as may occur when a group operates a network of subsidiaries across Europe. If the group operates instead through cross-border branches, then a different problem arises: the branches of large cross-border groups and the local banks with which they compete are supervised by different jurisdictions.

Furthermore, risks to an international banking group can arise in any of the countries in which it operates, and can be transmitted across borders from one part of the group to another. Information on the risks of the group as a whole, and to specific individual entities within the group, may not be readily available to any single supervisor.

The aim of CEBS is to develop a comprehensive yet flexible framework of co-operation which will ensure financial stability in a changing environment. The framework will conform to the legal responsibilities laid down in the proposed CRD, which introduces new elements into the relations between home and host supervisors. In particular, the CRD is proposing to grant additional tasks to 'consolidating supervisors' which will enable them to address the concerns of cross-border groups. The consolidating supervisor has an overview of group-wide developments; the supervisor of an individual subsidiary contributes by its proximity to the supervised institution and its knowledge of local market conditions. These arrangements increase the efficiency of supervision.

CEBS guidelines on cross-border supervisory co-operation will provide a practical framework for co-operation and the exchange of information, based on a common understanding of EU Directives. The framework will enhance the role of the consolidating supervisor, while ensuring the appropriate involvement of host supervisors and respecting their legal responsibilities. The objectives of the framework are to increase convergence of supervisory practices, to promote more effective co-operation between all of the authorities involved in the supervision of EU banking groups and to reduce the burden of supervision on EU banking groups. CEBS plans to publish proposed guidelines for public consultation in 2005.

#### **Crisis management**

In 2003, EU central banks and banking supervisors agreed on a Memorandum of Understanding, prepared by the Banking Supervision Committee (BSC) of the ESCB, on co-operation in crisis situations. An exercise conducted by the BSC on the basis of this MoU highlighted areas for further work, in particular the need for more refined principles for co-operation and exchanges of information in cases involving cross-border and systemic problems.

CEBS is working jointly with the BSC on additional crisis-management principles, convergence of supervisory practices and the development of effective operational network mechanisms for crisis management. The work also includes the organisation of an EU-wide simulation exercise and the development of a new three-party MoU between supervisors, central banks and finance ministries.

## Information exchange

The exchange of information between supervisors, covering both supervisory experiences and supervisory policies and practices, is essential for establishing operational and practical convergence, and is therefore an important element in CEBS' work.

CEBS is developing updated processes for such exchanges, as one element of its work on convergence of supervisory practices. For example, information exchange proposals are included in CEBS' guidelines on supervisory disclosure, and in its upcoming guidelines on home-host co-operation. CEBS work in this area will respect the principle, under the proposed CRD, that the primary responsibility for exchanging information concerning specific credit institutions rests with the supervisors directly concerned.

CEBS has analysed the gap between the work already under way and expectations for supervisory exchange of information when the CRD enters into force. Although most areas appear to be covered, there are some areas in which additional work would be useful, or existing work could be extended. This includes exchanging information on general lessons drawn from practical experiences, and sharing information with all supervisors who would benefit from it, and not just the supervisors who are involved in the supervision of a specific institution or group.

The benefits of improved information exchange must, however, be balanced against its cost, in terms of financial and IT resources. The scope for improvement may also be limited by legal constraints, such as secrecy and data protection interpretations and practices across the EU.

CEBS plans to conduct work on this subject in 2005 and to have an updated structure in place by the date of implementation of the CRD.

## 4.4. Other Areas of Work

A number of work streams and projects have been started outside the priority areas. These work streams were assigned to CEBS by third parties such as other European institutions, or were taken up by CEBS as part of its objective of pursuing convergence of supervisory practices.

### Risks to banking stability

CEBS has been asked to contribute to the review of sectoral risks conducted twice yearly by the Financial Stability Table of the Economic and Financial Committee. While macro-prudential analysis of the banking sector falls within the remit of the ESCB Banking Supervision Committee, CEBS is helping to elaborate the challenges facing supervisors and to identify possible policy responses.

### Outsourcing

CEBS has already published a consultation paper setting forth draft general principles for supervisory approaches and practices on outsourcing. Based on the feedback received, CEBS will now work on clarifying key concepts, developing guidance on what should be regarded as strategic or core activities, and developing guidance on the concept of a materiality test. This work will be carried out in co-operation with CESR, and will take into account the work done by the International Organisation of Securities Commissions (IOSCO) and the Joint Forum.

CEBS will compare its proposals with the proposals made by CESR. The two committees are working towards a solution that will ensure a consistent approach to outsourcing.

## 5. Co-operation with third parties

CEBS interacts regularly with other committees and European institutions. The Chair participates as an observer in the meetings of other committees and groups, at both the European and international level, on request and when relevant for the work of the Committee. The Chair addresses these committees on behalf of the Committee on matters of mutual interest. The Chairs of the respective committees may also be invited to participate as observers in CEBS. CEBS co-operates closely with the Banking Supervision Committee.

CEBS is also actively following the work of global standard-setting and co-operation organisations such as the Basel Committee, the International Accounting Standards Board (IASB), IOSCO and the Joint Forum.

CEBS has opened an EU-US dialogue with a visit to New York and Washington in January 2005. In the course of this visit, CEBS representatives had an opportunity to meet with US banking supervisors. As the major focus of banking supervisors on both sides of the Atlantic is currently on technical implementation issues of the new capital adequacy framework, it was agreed that a joint workshop would be held in the second half of 2005 to discuss and compare the solutions that are emerging in the EU and in the US.

### 5.1. Level-3 Co-ordination

CEBS, CESR and CEIOPS are developing arrangements for the exchange of information and experiences, with the goal of making Level-3 work more effective and avoiding duplication of effort. In order to ensure close co-operation, periodic meetings of the Chairs and Secretary Generals of CEBS, CESR and CEIOPS are held to discuss cross-sectoral issues of mutual interest.

CEBS, CESR and CEIOPS have asked the Commission to consider the possibility of relying on joint work by the three sectoral committees on fulfilling Level-3 tasks in the area of financial conglomerates. The application of the Conglomerates Directive raises issues relating to the process for co-operation and coordination between all of the authorities involved in the supervision of large and complex groups. These types of issues arise in both banking and insurance groups, so a solution ensuring overall consistency in approaches will need to be found.

Another area for Level-3 coordination is work on off-shore financial centres in non-co-operative jurisdictions. After the initiatives of the Financial Action Task Force and the Financial Stability Forum, a review is needed at the EU level to determine if there are still problems in dealing with, and obtaining information on financial institutions with establishments in non-co-operative jurisdictions. If reasons for concern are identified, a common EU solution may be required. The Financial Stability Table of the Economic and Financial Committee has asked CEBS, CEIOPS and CESR to report on this issue. A questionnaire and a joint report will be prepared, building on the work done in global fora.

The secretariats of the Level-3 committees held their first joint meeting in London in February 2005. All three secretariats agreed that co-operation between the committees is important and should be reflected in practical arrangements. The arrangements should include both access to information such as meeting documents, and practical co-operation in areas in which more than one committee has an interest. To complement this regular interchange, members of each secretariat could attend each others' working groups as observers when issues of mutual interest are being considered.

The list of items of common interest is extensive, and includes for example:

- Outsourcing of business activities
- Home-host co-operation
- Information exchange
- Definition of Level-3 tools
- Off-shore centres
- Credit rating agencies

The Chairs of the committees discuss issues of mutual interest on an ongoing basis, both in regular meetings and in more informal ways. Various arrangements for co-operation in specific areas are already in place. For example, CEBS' representatives participated in CESR's expert group on credit rating agencies, reflecting CEBS' interest in the role that external credit assessment agencies will play under the proposed CRD. In other instances, contact persons have been identified who can provide details on solutions proposed in one committee that may be relevant to the work of another committee (e.g. on capital requirements for banks and insurance companies).

As noted above, CEBS work on outsourcing work is being carried out in co-operation with CESR, and will take into account the work done by the International Organisation of Securities Commissions (IOSCO) and the Joint Forum.

Another way to ensure consistency and address cross-sectoral concerns is for each committee to comment on preliminary drafts of documents prepared by the other committees. Papers for plenary meetings will also be circulated to the respective secretariats.

CEBS, CEIOPS and CESR will adopt a broadly similar structure for reporting to the FSC on progress in convergence of supervisory practices. The committees are committed to learning from each others' experiences in order to maintain their accountability to the Commission, the Council and the Parliament.

- A.1 The Commission Decision 2004/5/EC**
- A.2 CEBS Charter**
- A.3 Timeline for the Work Programme**
- A.4 Annual Report and Financial Statement of CEBS Secretariat Ltd**

## II

(Acts whose publication is not obligatory)

## COMMISSION

**COMMISSION DECISION  
of 5 November 2003  
establishing the Committee of European Banking Supervisors**

(Text with EEA relevance)

(2004/5/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Whereas:

- (1) In June 2001, the Commission adopted Decisions 2001/527/EC<sup>(1)</sup> and 2001/528/EC<sup>(2)</sup> setting up the Committee of European Securities Regulators and the European Securities Committee respectively.
- (2) In its Resolutions of 5 February and 21 November 2002, the European Parliament endorsed the four-level approach advocated in the Final Report of the Committee of Wise Men on the regulation of European securities markets and called for certain aspects of that approach to be extended to the banking and insurance sectors subject to a clear Council commitment to reform to guarantee a proper institutional balance.
- (3) On 3 December 2002, the Council invited the Commission to implement such arrangements in the fields of banking and insurance and occupational pensions and to establish as soon as possible new committees in an advisory capacity in relation to those fields.
- (4) An independent body for reflection, debate and advice for the Commission in the field of banking regulation and supervision should be established.
- (5) That body, to be called the Committee of European Banking Supervisors, hereinafter referred to as 'the Committee', should also contribute to the consistent and timely application of Community legislation in the Member States and to the convergence of supervisory practices throughout the Community.

- (6) The Committee should promote cooperation in the banking field, such as the exchange of information.
- (7) The establishment of the Committee should be without prejudice to the organisation of banking supervision at either national or Community level.
- (8) 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; and 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 individual credit institutions concerned.
- (9) The Committee should organise its own operational arrangements and maintain close operational links with the Commission and the Committee established by Commission Decision 2004/10/EC of 5 November 2003 establishing a European Banking Committee<sup>(3)</sup>.
- (10) The Committee should cooperate with the other committees in the financial sector, in particular with the Committee established by Decision 2004/10/EC, with the Banking Supervision Committee of the European System of Central Banks and with the *Groupe de Contact* of European banking supervisors. In particular, it should be possible for the Committee to invite observers from other committees in the banking and financial sector.

<sup>(1)</sup> OJ L 191, 13.7.2001, p. 43.

<sup>(2)</sup> OJ L 191, 13.7.2001, p. 45.

<sup>(3)</sup> See page 36 of this Official Journal.

- (11) The Committee should, at an early stage, consult extensively and in an open and transparent manner with market participants, consumers and end-users.
- (12) Whenever the Committee provides advice on provisions applicable to both credit institutions and investment firms, it should consult those authorities competent for the supervision of investment firms which are not already represented on the Committee,

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 established.

*Article 2*

The role of the Committee shall be to advise the Commission either at the Commission's request, within a time limit which the Commission may lay down according to the urgency of the matter, or on the Committee's own initiative, in particular as regards the preparation of draft implementing measures in the field of banking activities.

The Committee shall contribute to the consistent application of Community directives and to the convergence of Member States' supervisory practices throughout the Community.

It shall enhance supervisory cooperation, including the exchange of information on individual supervised institutions.

*Article 3*

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.

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.

The Commission shall be present at the meetings of the Committee and shall designate a high level representative to participate in its debates.

Whenever confidential information concerning an individual supervised institution is exchanged, participation in that discussion may be restricted to the competent supervisory authorities and the national central banks entrusted with specific operational responsibilities for the supervision of the individual credit institutions concerned.

The Committee shall elect a chairperson from among the representatives of the competent supervisory authorities.

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

*Article 4*

The Committee shall maintain close operational links with the Commission and with the Committee established by Commission Decision 2004/10/EC.

It may set up working groups. The Commission shall be invited to participate in the working groups.

*Article 5*

Before transmitting its opinion to the Commission, the Committee shall, at an early stage, consult extensively and in an open and transparent manner with market participants, consumers and end-users.

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 on the Committee.

*Article 6*

The Committee shall submit an annual report to the Commission.

*Article 7*

The Committee shall adopt its own rules of procedure and organise its own operational arrangements, including voting rights. Only representatives of the competent supervisory authorities shall receive voting rights.

*Article 8*

The Committee shall take up its duties on 1 January 2004.

Done at Brussels, 5 November 2003.

*For the Commission*

Frederik BOLKESTEIN

*Member of the Commission*



# Annex A2

## CHARTER OF THE COMMITTEE OF EUROPEAN BANKING SUPERVISORS (CEBS)

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 [...] establishing the Committee of European Banking Supervisors (2003/.../EC);
- 6) the proposal for a directive of the European Parliament and the Council amending European Parliament and Council Directive 2000/12/EC, Council Directive 91/675/EEC, Council Directive 85/611/EEC as last amended by European Parliament and Council Directives 2001/107/EC and 2001/108/EC, Directive 2002/87/EC, Directive 2002/83/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, especially in the context of the Memorandum of Understanding on high-level principles of co-operation between the banking supervisors and central banks of the European Union in crisis management situations;

**having regard to** the importance of greater supervisory and regulatory convergence 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 Commission's request or on the Committee's 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 State's 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 three 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. Notwithstanding the above, the first Bureau will be elected for a period of three years.

## **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 Commission's 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.
- 4.4 The Committee will develop effective operational network mechanisms 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. In this respect, the Committee will particularly take account of the work of the BSC.
- 4.6 The Committee will provide a platform for an exchange of supervisory information, in order to facilitate the performance of member's 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.

#### **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 working 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 may establish expert groups, chaired by a committee member (or under the member's supervision), working with a given mandate and to be disbanded upon completion of the mandated work. The composition of such expert groups should be flexible in order to involve other relevant authorities where necessary. The Committee may also establish permanent groups, working within specific terms of reference.
- 5.6 For the execution of its tasks as set out in Article 4 above, the Committee will aim to work by consensus of its members. Decisions are taken by consensus, unless when giving advice to the Commission. In that case, the Committee will strive for consensus, and, 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. 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. Decisions taken by qualified majority are not legally binding in areas where national authorities are competent.
- 5.7 Unless otherwise stated, the principles under 5.6 will also apply in all remaining matters.
- 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 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 cooperation, 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.

#### **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.”

#### **ARTICLE 9 – FINAL PROVISIONS**

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

# Annex A3

## CEBS Work Programme 2005

	1st Quarter 2005		2nd Quarter	3rd Quarter	4th Quarter	1st Quarter 2006
	CEBS meetings 18.1	17.3	28.6		25.10	
<b>1. ADVICE TO THE COMMISSION</b>						
National discretions						
Cross border mergers			COMMISSION			
E-money						
Own funds						
Liquidity						
<b>2. CONVERGENCE OF SUPERVISORY PRACTICES</b>						
<b>2.1 Basel II-related issues</b>						
Pillar 2 (incl. internal governance)*	CEBS	CEBS	CEBS			CEBS
Validation of IRB and AMA systems			CEBS			CEBS
Common reporting of the capital ratio	CEBS		CEBS			
ECAIs			CEBS			CEBS
Supervisory Disclosure		CEBS			CEBS	
<b>2.2 Accounting and auditing</b>						
Prudential impact of IFRS			CEBS			
IFRS compliant formats	CEBS	CEBS			CEBS	
Supervisory guidance for IFRS						
Audit function and supervision			CEBS			
<b>2.3 Other issues relating to convergence of supervisory practices</b>						
Outsourcing			CEBS			CEBS
<b>2.4 Cross-sectoral issues</b>						
Conglomerates	<i>To be agreed with CEIOPS and CESR, following a common understanding with the Commission</i>					
Off-shore centres			FSC/EFC			
<b>3. CO-OPERATION AND INFORMATION EXCHANGE</b>						
Home-host issues**	CEBS	CEBS	CEBS			CEBS
Crisis management (joint with BSC)					CEBS	
Information exchange	CEBS					
Risks to banking stability			EFC	EFC		

Technical work in substructures	Public consultation	Feedback and revision
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\*Pillar 2 revised consultation paper delayed by further technical work.

\*\*Home-host paper postponed to include model validation and road-testing before publishing a consultation paper.

# Annex A4

## CEBS Secretariat Limited

### Revenue and Expenses

*For the period 23 June to 31 December 2004*

	<i>£'000</i>
<b>Revenues</b>	
Contributions from members	1,525
Other income	82
Interest	15
<b>Total revenues</b>	<b>1,622</b>
<b>Expenses</b>	
Secondment fees	374
Premises	127
Professional fees	112
Communication costs	71
Depreciation	41
Computer and IT development	28
Travel	25
Salaries and employee benefits	19
Lease tax	15
Meetings	14
Office supplies	9
Miscellaneous	2
<b>Total expenses</b>	<b>837</b>
<b>Excess of revenues over expenses before taxes</b>	<b>785</b>

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

Fit out the CEBS offices	650
Computer equipment	192
Office equipment and furniture	174

The following statement is required under s240 of the UK Companies Act 1985 where a company publishes accounts which are not in the format required by the Act.

The above financial statements are not the statutory accounts of CEBS Secretariat Limited. The statutory accounts of CEBS Secretariat Limited for the period ended 31 December 2004 have been delivered to the Registrar of Companies and CEBS Secretariat Ltd has received an audit report which was unqualified and did not contain any statements under sections 237(2) and (3) of the Companies Act 1985.



