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To CEBS

Copy to

European Banking Federation (FBE)
Risk Management Group (RMG)
Werkgroep Overleg Coördinatoren Bazels Akkoord (WOCBA)

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Reference Response consultation document 'Guidelines for co-operation between consolidating supervisors and host supervisors'

Summary

The Netherlands Bankers' Association (NVB) welcomes the consultative document 'Guidelines for co-operation between consolidating supervisors and host supervisors' of the Committee of European Banking Supervisors (CEBS). We strongly support the intent of the CEBS to formalize the information exchange between supervisors in order to reduce the administrative burden of the bilateral arrangements within Europe is the industry's first priority for the banking industry in the long term. The fragmentation in supervisory practices regarding cross-border issues resulting from different bilateral MoUS is finally seen as a problem that has to be solved.

The NVB believes that the consultation paper is a good attempt to provide guidance for co-operation between supervisors. We appreciate the amount of detail that has been put into the guidelines to make supervisory co-operation work in practice. At the same time, the NVB considers the guidelines a *starting* point for a more integrated approach to prudential supervision:

- The NVB shares the view of the European Banking Federation and European Financial Roundtable on lead supervision; and
- The NVB would like to ask CEBS for a strong and clear view on the future architecture of banking supervision in alignment with the Post-FSAP agenda;
- The NVB believes that regarding to an effective application of the guidelines for co-operation it is of essential importance that the (host) supervisors are willing to commit themselves to the guidelines

Furthermore, we would like CEBS to elaborate in its final guidelines on the following issues:

- The way in which the guidelines are binding on all supervisory authorities across the European Union. The current guidelines do not state the procedure to be followed in case of differences of opinion between individual supervisors on co-operation;
- The possible sanctions for EU supervisors in case they do not adhere to the CEBS guidelines;
- A possibility for an individual credit institution to appeal against the lack of co-operation that individual supervisors agreed on for that institution; and

2. Specific questions

Below you will find feedback from the NVB on the specific questions in the CEBS document.

The European Financial Market

- I. Are there any changes not mentioned here that you deem significantly impacting on the European financial sector and, in particular, on the supervision of cross-border banking groups?

The NVB believes that beside the centralization of risk management and the aim for an integrated internal market another important change that will impact the European financial sector is the way the Capital Requirement Directive (CRD) is implemented in national law. We think this should be more emphasized more in the paper.

- II. What are your views on the need for a co-operative framework among supervisors that is at the same time comprehensive and flexible?

The NVB is of the opinion that the proposed co-operative framework is a good starting point. However, we consider the framework as an interim solution, which should be evaluated after some time. The evaluation should be focusing on the alignment with the post FSAP, in particular regarding the future of banking supervision. In our view the final (future) supervision structure should be based on the consolidated supervisor-model.

Supervisory considerations with regard to these changes

- Paragraph 22 states that 'the supervisory framework should allow for a consistent approach to risk assessment within a group, and should make clear which tasks are to be carried out by the different supervisors involved at the group and local level, in particular under Pillar 2'. The NVB asks for more clarification about 'consistent approach' and suggest replacing the word 'particular' in 'also'.
- Paragraph 23 states that 'supervisors may consider the resource implications, including the cost impact of such co-operation'. The NVB is wondering if this is possible under the proposed CRD.

- III. What are your views on the description of the respective interests and roles of consolidating and local supervisors within the proposed framework?

The NVB is of the opinion that besides the interest and roles of the supervisors some instruments should be implemented that ensure the convergence of supervisory practices. Furthermore, we ask for the full recognition of the role of the consolidating supervisor.

- IV. What are your views on the concept that supervisory cooperation should go beyond the mere exchange of information in order to enhance effectiveness?

The NVB believes that information exchange is only an interim phase. Real cooperation through coordination of tasks will enhance effective supervision.

- V. What are your views on the suggestion that supervisors should, with a view on efficiency, consider the possibility of performing tasks on behalf of one another in strict respect of each other's legal powers and responsibility?

The NVB believes that performing tasks on behalf of one another is already established in Memories of Understanding. The CRD now gives the opportunity to go beyond the bilateral arrangements and perform the division of tasks in a multilateral framework.

VI. Do you see major risks for duplication of tasks under the proposed framework? If yes, which are these?

The NVB thinks that in the short term the industry will experience a duplication of supervisory tasks and will regard this as an investment in the future, preferably the consolidating supervisor model. However, we like to emphasize again that a clear view on the future architecture of banking supervision is essentially for the sector.

VII. Do you wish to make any comments or suggestions with regard to the considerations set out in this chapter?

The NVB strongly suggests further co-operation en information exchange between supervisors and convergence of supervisory practices between supervisors.

Overview of the EU framework

- Paragraph 30 describes a set of factors which can be taken into account separately or in combination regarding the assessment of significance for (i) measuring the impact on the host local market and (ii) measuring the impact on the group as a whole. The NVB suggest regarding:
 - (i) to add as a factor of significance the total risk weighted assets in a country;
 - (ii) The first mentioned measuring factor is ‘the contribution of the entity to the performance and earnings of the group as a whole (e.g. to overall capital requirements, turnover, or pre-tax)’. We are of the opinion that also % of risk weighted assets should be added between the brackets;
 - (ii) The second mentioned measuring factor is ‘the risks of activities undertaken in the entity’. We ask to specify this measuring factor more in terms of % of groups risk weighted assets.
- Paragraph 34 states that ‘consolidating supervisors and host supervisors should have written arrangements specifying their respective roles in the supervisory co-operation’. The NVB is in favour of disclosing these arrangements to the relevant bank as this improves efficiency and transparency

VIII. What are your views on significance of each entity within a group and/or within its domestic market as key elements, with a view on proportionality, for structuring the process?

See our comments on paragraph 30.

IX. What are your views on the proposed approach to assess significance? Do you want to make any suggestion as to improve this approach?

The NVB believes that the chosen measures should be given quantitative limits. It is not clear which supervisor will have the decisive vote in case of dispute between the home- and host supervisor.

Model of co-operation: Information Exchange

- The NVB explicitly emphasize that the given model of co-operation should not be treated as a checklist by the supervisors;
- The NVB asks for more clarification regarding objective 3 (Communicate difficulties by the host supervisor that have potentially significant spill-over effects within the group) which states as an adverse development ‘excessive reliance on intra-group transactions or parental support (e.g. guarantees)’ (see page 18). Since the NVB does not see this as negative.

X. What are your views on the general description of the process as set out in the tables above? Does it depict a logical workable and comprehensive approach?

The NVB believes that it does depict a logical workable and comprehensive approach.

- XI. Do you see additional potential for streamlining the process of co-operation, under the present legal provisions? What suggestions do you wish to make in this respect?

Practical framework (group and subsidiary)

- Paragraph 50 (Step 1 – Initiation of process) mentioned as one of the tasks of consideration for the host supervisor regarding agreement on significant subsidiaries in the group for the purpose of group and subsidiary supervision : ‘agree on significant subsidiaries with the host supervisor’ (see page 23) The NVB is wondering what will happen if there is no agreement (see question IX);

Practical framework (group and branches)

- Paragraph 59 (page 27): see our comment on paragraph 50.

Practical framework (model approval)

- Paragraph 74 (page 32) states that ‘consolidating supervisors should liaise with host branch supervisors of systematically relevant branches to determine the extent to which the latter can contribute to the efficiency of the process’. The NVB thinks that the word ‘branches’ can be very confusing, since host supervisors are not allowed to interfere with branches. We recommend CEBS to refer very clearly to subsidiaries.

- XII. Do you see any serious obstacles to the smooth process of model approval stemming from the proposed tasks executed by the consolidating supervisor and the host supervisors? If yes, what are they and how to remove them?

The NVB does not see any serious obstacles.