

15 June 2010

Feedback to the consultation on CEBS's Draft Guidelines for the Operational Functioning of Colleges (CP 34)

1. On 17 December 2009, CEBS submitted for public consultation its **Draft Guidelines for the Operational Functioning of Colleges (CP 34)**. The consultation period ended on 31 March 2010. Eight written responses were received¹.
2. This paper presents a summary of the key points arising from the consultation and the changes made to address them.
3. For the purposes of assessing the comments received, CEBS has distinguished between:
 - general remarks on the concept of colleges of supervisors and the content of CP 34
 - specific comments relating to single sections or guidelines of CP 34
4. In many cases, different respondents made similar comments or the same respondent reiterated the same comments through its response. In such cases, similar comments have been grouped and their correlated CEBS responses are addressed once in the section that CEBS has considered more suitable.

General remarks

5. Respondents supported colleges as an instrument allowing for a more effective and efficient supervision of cross-border banking groups. Similarly, respondents welcomed the proposed guidelines and considered them a good tool for encouraging convergence of supervisory practices across different colleges, and that they thus help to create a level playing field.

¹ The responses to CP34 are published on the CEBS public website under: <http://www.cebbs.org/Publications/Consultation-Papers/All-consultations/CP31-CP40/CP34/Responses-to-CP34.aspx>

6. All respondents appreciated the pivotal role afforded to the consolidating supervisor, as well as the flexibility granted to the consolidating supervisor when deciding on the college structure (i.e. the possibility of having a core college setting where appropriate) and non-EEA membership.
7. Several respondents would like to see a clear decision making procedure in place within colleges of supervisors, where college members would try to reach joint agreements in all areas of supervision and, in its absence, the decisions would be taken by the consolidating supervisor. Other respondents stressed the important role that the future EBA could play in settling disagreements between supervisory authorities within a college.
8. The feasibility of the engagement of non-EEA supervisory authorities in colleges was well received, as it enhances the effectiveness of the college while minimising the risk of parallel running between European and International colleges. Respondents expect that, in practice, the participation of key non-EEA authorities is encouraged.
9. Several respondents pinpointed the importance of the compatibility between the "Draft CEBS' Guidelines for the Operational Functioning of Colleges" and the BCBS's "Good Practice Principles on Supervisory Colleges" which are currently under elaboration.
10. Most of the respondents advocated an increased interaction between the supervisory college and the management of the supervised group, mainly through more extensive feedback to the group and through enabling an enhanced participation of the group in the meetings of the college by notification in advance of supervisory expectations.
11. Stakeholders support the use of sharing and delegation of tasks as a mechanism that can increase effectiveness and efficiency of supervision and, therefore, welcome the encouragement by CEBS guidelines of the use of this mechanism. Several respondents would welcome a similar encouragement of the delegation of responsibilities when the legal framework is clarified in this respect.
12. Respondents suggested more harmonisation of Pillar 2 approaches and methodologies as a way to facilitating the joint decision on the risk-based capital adequacy that Article 129.3 requires.
13. With respect to crisis management, respondents remarked on the important role that colleges – in particular core colleges where appropriate - and college infrastructure can play in assuring a coordinated response to an emergency situation. Some respondents also suggested ensuring that the guidelines not interfere with possible developments following the European Commission consultation on crisis management.
14. Most of the respondents made reference to the upcoming changes in the European Supervisory Architecture and the potential impact of those changes on the "CEBS' Guidelines for the Operational Functioning of Colleges" as well as the functioning of colleges themselves. Most of the respondents agreed to the participation of the future European Banking Authority (EBA) in colleges of supervisors. However, while some of the respondents advocated a stronger role

for the EBA (e.g. by settling disagreements between supervisors), others gave expression to concerns that the presence of the EBA in the college could discourage the exchange of sensitive information or undermine the leadership of the consolidating supervisor². While of the view that the guidelines provide a good basis for potential technical standards to be developed by the future EBA, respondents also warned that the potential standards would need to take due account of the fact that the detailed operation of supervisory colleges is subject to a high degree of discretion and judgement by the consolidating supervisor.

15. Respondents concurred that it is appropriate for CEBS to expect its members to implement the guidelines on the same date as the entry into force of the CRD³.

CEBS' response to generic remarks

16. Most of the respondents' generic remarks related to upcoming changes in the European Supervisory Architecture. Whilst welcoming and noting the respondents' views on the matter, CEBS considers it appropriate to wait until the regulations of the upcoming ESRB and EBA are in place before applying changes to the "CEBS' Guidelines for the Operational Functioning of Colleges". Nevertheless, CEBS stands ready to adapt its "Guidelines for the Operational Functioning of Colleges" when the relevant regulations have been approved.
17. Similarly, CEBS is committed to carefully monitoring global and European regulatory developments regarding crisis management and adapt the guidelines relating to emergency situations as appropriate.
18. Equally, CEBS is closely monitoring the development of the BCBS' "Good Practice Principles on Supervisory Colleges" and stands ready to adapt its guidelines, if need be, to ensure the two sets are compatible, as CEBS believes that there should be only one supervisory college for each cross-border banking group, albeit with several operational settings where appropriate. For the same reason, CEBS is committed to encouraging the participation of non-EEA supervisory authorities, subject to confidentiality requirements, in colleges of supervisors operating under the revised CRD requirements.
19. With respect to further harmonisation of Supervisory Review and Evaluation Processes, CEBS considers further convergence of supervisory practices as one of its main long-term objectives - something which will also be a priority for the upcoming EBA - and regards the "Draft Guidelines on Joint Assessment of the Elements covered by the SREP and the Joint Decision on the Risk-Based Capital Adequacy" (CP 39) as a first step towards that goal..

² Some respondents expressed similar comments with respect to the current voluntary participation of CEBS in colleges of supervisors.

³The date for entry into force of CRDII (Directive EC/2009/110) is 31 December 2010. According to Article 4(2) of Regulation 1182/71 determining the rules applicable to periods, dates and time limits "Entry into force, taking effect or application of acts of the Council or Commission — or of provisions of such acts — fixed at a given date shall occur at the beginning of the first hour of the day falling on that date."

20. Many of the remarks show that stakeholders expect supervisory authorities to fully implement the guidelines in practice. As CEBS believes that operational colleges can contribute to a more effective and efficient supervision of cross-border banking groups and to convergence of supervisory practices, CEBS is committed to facilitating a swift and consistent implementation of the guidelines.

Specific remarks

21. The table below provides a description of the specific comments received from respondents and how the guidelines have been revised on the basis of the comments received, where appropriate.

Feedback table on “CEBS’ Draft Guidelines for the Operational Functioning of colleges” (CP34): analysis of the specific comments and suggested amendments

	Topic, reference	Comments received	CEBS’ response	Amendments to the text
1	Chapter 1, Guideline 1	Support for the mapping of the group provided that supervisors do not try to use the mapping exercise to influence the group structure.	The purpose of the mapping exercise is in order to allow for a structuring of the college, which is in accordance with the organisation, scale and complexity of the supervised group.	No changes required.
2	Chapter 1, Guideline 4	One respondent strongly felt that the responsibility for model validation should rest with the core college.	The involvement in the joint decision on the permission to use internal models of all EEA supervisors of credit institutions jointly applying for the use of an internal model is a legal requirement stemming from Article 129.2 CRD. While observance of this legal requirement is always needed, CEBS agrees that a more extensive involvement of the relevant core college members in the validation works may be suitable for certain banking group and college structures.	No changes required. Guideline 3 allows for a more extensive cooperation among core college members where appropriate.
3	Chapter 1, Guideline 5	One respondent welcomed the emphasis on confidentiality requirements for the participation of non-EEA authorities in supervisory colleges, but noted that care must be taken not to unnecessarily exclude them from the general	CEBS agrees with this comment.	No changes required.

		or core college as appropriate.		
4	Chapter 1, Guidelines 6 and 9	One respondent felt that the decision on the inclusion of non-EEA supervisors should be taken by the consolidating supervisor and core college, allowing objections from other members within a given timeframe. They suggested cross-referencing to Guideline 9, since the process for assessing equivalence should be the same in both guidelines. The respondent also suggested establishing a deadline for raising concerns about equivalence of non-EEA countries' equivalence provisions.	CEBS considers it appropriate that the consolidating supervisor takes the initiative in inviting non-EEA supervisors to sign the written cooperation and coordination agreement. The opinion of all EEA supervisors on the equivalence of confidentiality provisions to those of the CRD is a legal requirement stemming from Article 131a of the CRD. While observance of this legal requirement is always needed, CEBS agrees that a more extensive involvement of the relevant core college members in the assessment of equivalence may be suitable for certain banking group and college structures. CEBS agrees to cross-reference to Guideline 9 for the purposes of clarity and consistency. College membership needs to constantly adapt to changes in the group's structure. Similarly, legislation on confidentiality provisions is subject to change over time. Therefore, although agreeing that concerns over confidentiality provisions should be raised within a reasonable timeframe, CEBS considers that establishing a deadline may not be the most effective approach.	Guideline 3 allows for a more extensive cooperation among core college members where appropriate. New sentence to be added to paragraph 36 (current paragraph 42) : <i>"The assessment of the equivalence of confidentiality provisions will be made along the lines described in guideline 9"</i> Rewording of paragraph 51 (current paragraph 57), third bullet point: <i>"EEA members of the college should provide to the consolidating supervisor <u>in a timely manner</u> any reservations..."</i>
5	Chapter 1, Guideline 8	One respondent felt that many of the principles used to determine the relevance and significance of a subsidiary were also relevant in the context of determining the level	The three criteria mentioned in Article 42a of the CRD and in Guideline 8 always need to be considered in the making of any determination as to the significance of a branch in an EEA Member State. This does not rule out the possibility of using additional criteria to assess relevance and/or significance. As stated in Guideline 1, CEBS expects that the extent of	No changes required.

		of participation of a branch supervisor.	cooperation within a college to be tailored to the relevance of the entities within the group and their local significance.	
6	Chapter 1, Guideline 10	Respondents tended to support this guideline, provided that confidentiality is safeguarded.	CEBS agrees with this comment.	Reword guideline 10 as follows: “ <i>of related undertakings(..) supervisors os non banking sectors, as well as central banks, may participate in the meetings or activities of a college – <u>provided that they are subject to confidentiality requirements</u> - when deemed appropriate(...)</i> ”
7	Chapter 1, Guideline 14	One respondent expected colleges to meet more than once a year if they were to reach a joint assessment and decision on risk-based capital adequacy	CEBS agrees with this remark. As stated in Guideline 14, the annual meeting of the college is a minimum requirement. Besides, as stated also in the explanatory text, CEBS expects its members to fulfil the college activities not only during college meetings, but on an ongoing basis, through working level contacts between college members, who will use several communication channels for these purposes.	No need to change the guidelines.
8	Chapter 1, Guideline 16	Respondents expressed diverging views, with most members supporting the participation of CEBS as an observer at college meetings as a mechanism to enhance convergence and ensure a level playing field.	In light of the diverging views of the different stakeholders, and taking into account that the upcoming regulatory changes in the European Supervisory Architecture are very likely to have an impact on the way that the EBA will interact with colleges of supervisors, CEBS considers it advisable to postpone changes in these guidelines until the new framework is clearly defined. CEBS agrees that clarification that the	Reword Guideline 16 as follows: “ <i>CEBS, <u>represented by its Secretariat</u>, should be invited to participate in the meetings of the college as an observer (...)</i> ”. Reword paragraph 65 (current paragraph 71) as follows: “ <i>With a view to achieving convergence (...),</i>

	<p>Whilst agreeing to that, some respondents advocated a stronger role for CEBS in fostering the functioning of colleges, while others expressed concerns about the risk of undermining the leadership of the consolidating supervisor and the willingness by college members to exchange information. Similarly the risk that a strong role for CEBS-EBA would undermine the good functioning of the global college was also a concern (i.e. college involving non-EEA authorities). Other respondents doubted that CEBS's participation in supervisory colleges was the best mechanism for promoting convergence. Clarification as to whether the guidelines refer to CEBS members or the CEBS Secretariat was also sought.</p>	<p>involvement of CEBS in supervisory colleges is channelled through the CEBS Secretariat is advisable. Stakeholders can rest assured that CEBS Secretariat experts are bound by professional secrecy and confidentiality provisions. Similarly, the staff of the upcoming EBA will be bound by professional secrecy and confidentiality obligations.</p>	<p><i>CEBS, represented by its Secretariat, should be invited (...) to participate in the meetings of a college as an observer"</i> <i>Add a footnote clarifying that the CEBS Secretariat staff are bound by confidentiality provisions.</i></p>
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9	Chapter 2, Guideline 17	Respondents expressed diverging views with respect to the guidelines specifying information items to be exchanged within the colleges, with some respondents advocating minimum requirements for information to be exchanged and others considering that the list of information items to be exchanged should be presented as an example in order to avoid excessive prescription.	Given the diverging opinions among stakeholders, CEBS considers the current wording of Guideline 17 as a good compromise: the key information items mentioned therein are described in a way that allows members of each college to tailor the specific details of the information to be exchanged to the features of each supervised group. CEBS acknowledges that changes may need to be made to the list as a result of the public consultation and field testing of the "Draft Guidelines for the Joint Assessment of the Elements Covered by the SREP and the Joint Decision on risk-based capital adequacy".	No changes required
10	Chapter 2, Guideline 22	One respondent suggested that, for efficiency reasons, the parent company be used as a single entry point for the communication of the key information described in Guideline 22.	CEBS agrees with this proposal.	Reword paragraph 80 (current paragraph 86) as follows: "(...) <i>Communication with the management of the parent company should reflect the key activities of the college.</i> (...)"
11	Chapter 2, Guideline 23	Respondents showed strong support for the coordination of information requests and suggested streamlining the	CEBS agrees with the proposed change in paragraph 81	Reword paragraph 81 (current paragraph 87) as follows: " <i>With a view to avoiding duplication of requests, all the members of the college should</i>

		wording of paragraph 81.		endeavour to ensure that information requests to the parent company and to the local entities of the group are as coordinated as possible
12	Chapter 2, Guideline 24	Two respondents suggested that host supervisors jointly inform the locally licensed entities as well as the parent company.	In order to align responsibility for communication with supervisory responsibilities, CEBS feels that, as a general rule, it is appropriate that the consolidating supervisor informs the parent company and the host supervisors inform locally licensed entities, assuming that the latter inform the parent company of any relevant information coming from the host supervisory authority.	No changes required.
13	Chapter 2, Guideline 25	All respondents showed support for the guideline, with some of them suggesting that the group be informed in advance of supervisory expectations with regard to the meeting.	CEBS agrees with the proposal to inform the management in advance of supervisory expectations with respect to the meeting, since it can increase the effectiveness of the meeting.	Reword paragraph 84 (current paragraph 90) as follows: <u>"(...) Prior to the meeting, the supervised group will be informed, to the fullest extent possible, about the supervisory expectations with respect to the meeting. The supervised group will receive, as a follow-up to the meetings..."</u>
14	Chapter 3, Guideline 34	One respondent suggested entrusting the college with the review of the performance of the delegated tasks.	CEBS believes that the delegating authority is best placed to review the performance of the delegated tasks. Nevertheless, CEBS acknowledges that, in practice, the authorities involved in the delegation agreements are free to agree on entrusting such a review to the college.	No changes required.

15	Chapter 4	One respondent suggested that the guidelines provide more granularity on the types of model validation decisions to be made by the college, so as to furnish clarity with respect to which changes to models were material enough for the delivery of a joint decision under Article 129.2.	CEBS takes note of this proposal for potential future changes in CEBS guidelines on the implementation, validation and assessment of Advanced Measurement (AMA) and Internal Ratings Based (IRB) Approach.	No changes required.
16	Chapter 4, guideline 38	A respondent showed a preference for extending the procedure described in paragraph 128 –the consolidating supervisor informing the group of the supervisors’ findings and informing the supervisors of the groups’ comments - to the ongoing review of the models.	The on-going review of the models is part of the Supervisory Review and Evaluation Process and the dialogue with the supervised institutions should take place along the lines described in “CEBS’s Guidelines on the Application of the Supervisory Review Process under Pillar 2”. CEBS, however, notes this proposal for potential future changes in SREP-related guidelines.	No changes required.
17	Chapter 5	Several respondents advocated more harmonization of Supervisory Review Processes in order to facilitate a common evaluation and the joint	CEBS considers further convergence of supervisory practices as one of its main long term objectives, which will be also a priority for the upcoming EBA, and regards the “Draft Guidelines on Joint Assessment of the Elements covered by the SREP and the Joint Decision on the Risk Based Capital Adequacy” as a first step	

		decision on risk-based capital adequacy.	towards that goal.	
18	Chapter 5	One respondent advocated a decision by the consolidating supervisor in the absence of joint decisions.	The allocation of decisions on the risk-based capital adequacy at the individual, sub-consolidated and consolidated level in the absence of a joint decision is legally determined by Article 129.3 of the CRD: in the absence of a joint decision, the decision on the risk-based capital adequacy shall be taken on a consolidated basis by the consolidating supervisor and the decision on the risk-based capital adequacy at the individual or sub-consolidated basis level shall be taken by the respective competent authorities responsible for the supervision of subsidiaries.	No changes required.
19	Chapter 6, Guideline 50 (current Guideline 52)	Several participants suggested that the guideline should be clearer on how supervisory colleges are expected to interact with the ESRB and the EBA in regard to macro-prudential risks.	CEBS considers it more appropriate to undertake the task of clarifying the interaction between supervisory colleges, the ESRB and the EBA when the regulations of the latter have been approved. CEBS stands ready to modify its guidelines once the relevant regulations have been passed.	No changes required now.
20	Chapter 7, Guideline 51 (current Guideline 53)	Several respondents was concerned about local planning not being consistent with the plan agreed within the college	CEBS agrees that local planning should be consistent with the plan agreed within the college	Reword paragraph 207 (current paragraph 222) as follows: <i>"(...) This does not, of course, prevent any supervisory authority from drawing up a local supervisory action plan, <u>provided that it takes into account with the coordinated plan.</u>"</i>

21	Chapter 8, Guideline 59 (current Guideline 61)	One respondent was concerned that, when involving other authorities in crisis managements, confidentiality should be safeguarded.	CEBS agrees with this proposal.	Add the following final words to Guideline 59 (current Guideline 61) <i>“provided that they are subject to confidentiality requirements”</i> .
22	Chapter 8, guideline 61 (current Guideline 63)	Several respondents would welcome more clarity on who has responsibility for identifying emergency situations.	For the time being, and in the absence of a European body entrusted with the responsibility for declaring the existence of an emergency situation, CEBS considers it appropriate that each supervisor is charged with detecting an emergency situation within their areas of responsibility. CEBS stands ready to modify its guidelines, if need be, in order to make them compatible with upcoming global or European regulations.	No changes required