



European Banking News

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Work in the banking sector...

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Cross-border consolidation: a new cross sectoral approach

The informal ECOFIN in Scheveningen on 11th September 2004 considered the issue of cross-border consolidation in the banking sector. As a result of that discussion, the Commission undertook to consider the impact of existing supervisory rules, in particular as regards the supervisory approval process outlined in Article 16 of Directive 2000/12 for the acquisition of a "qualifying shareholding" in a credit institution.

Following the Scheveningen meeting, the European Banking Committee (EBC) (and its predecessor the Banking Advisory Committee) began reviewing how the supervisory approval process as outlined in Article 16 could be improved. Technical advice from the Committee of European Banking Supervisors (CEBS) was requested and received at the end of May 2005. The work to review Article 16 progressed steadily throughout 2005 and an EBC working group was established specifically to look at this issue.

At the last EBC Meeting on November 8th 2005, there was broad endorsement for the general principles of the changes proposed even though some had reservations on specific points. The EBC was also updated on related work within the insurance and securities areas, where it was noted that the legislative provisions in these sectors are very similar to Article 16.

On the same day as the November EBC meeting, the Council of Ministers for Economic and Financial Affairs (Ecofin) met in Brussels, and a discussion on cross border consolidation took place. At this meeting, the Commission presented a paper on the proposed revisions to Article 16. The results of the survey on barriers to cross-border consolidation were also presented, in addition to a Commission Communication on 'Intra-EU investments in the financial services' sector'. The Presidency conclusions from this Ecofin meeting offered support for the Commission's ongoing review of Article 16 and the corresponding articles of the insurance Directives. The Ecofin conclusions also emphasised the need for consistency across financial services sectors in the prudential rules that apply to M&As.

Following the Ecofin Presidency conclusions, consideration was given to undertaking a review of the provisions in the securities and the insurance sectors at the same time as the banking sector.

*A cross-sectoral
joint review ...*

*The public consultation can
be accessed at the following
web site address:*

*[http://europa.eu.int/
yourvoice/ipm/forms/
dispatch?form=shareholdings](http://europa.eu.int/yourvoice/ipm/forms/dispatch?form=shareholdings)*

Discussions were held in the European Securities Committee (ESC) and the European Insurance and Occupational Pensions Committee (EIOPC) in November and December 2005. These discussions indicated support for a cross-sectoral approach and so the decision was taken to proceed with the project as a joint initiative across the three sectors.

Naturally, at this time work in the banking sector was at a much more advanced stage than the other sectors, but since the decision was taken to make the review cross-sectoral, considerable work has been carried out in the insurance and securities sectors to align the proposals with the banking sector. Draft texts, consistent with the proposed revisions to Article 16, were drawn up for the insurance and securities sectors. A joint cross-sectoral working group was also established which held its first meeting on February 3rd 2006. This meeting was very constructive and substantial progress was made. Commission services are reviewing the comments received from the revised draft texts circulated on February 27th, and will further revise the text in response to the comments received.

In line with the Commission's commitment to better regulation a public consultation has been launched. The public consultation will be open until April 19th. The responses will form the basis of a report with a view to possible amendments to legislation in summer 2006. In relation to the impact assessment and the public consultation it should be emphasised that these are and will be proportional to the review and changes proposed. Any proposed revisions of the provisions relating to supervisory assessments of qualifying shareholdings do not envisage changing supervisory powers. Instead they seek to clarify existing powers, enhance the transparency of the process and procedures, improve supervisory convergence in the application of the rules, and to set out how supervisors should co-operate in instances of cross-border transactions. As such, the public consultation is focused on the existing rules and, whether or, to what extent market participants believe that the existing rules could be improved. The impact assessment will also reflect the limited scope of this review, being proportionate to any changes proposed.

Deposit Guarantee Schemes: Review of the EU Directive

The Commission is in the process of conducting a wide-ranging review of the deposit guarantee schemes Directive (94/19/EC), and the issue has been discussed on several occasions at the EBC and its predecessor the BAC).

The current Directive sets out a regulatory framework for the establishment of deposit guarantee schemes based around minimum harmonization – which leaves Member State authorities relatively free to determine the precise mechanics. In particular, the existing framework allows Member States discretion when setting the coverage level on condition it does not fall below the €20,000 minimum threshold. Credit institutions who take deposits on a cross-border basis via branches may subscribe to the local host deposit

Current minimum harmonisation Directive has led to a fragmented regime...

Commission will publish a Communication in Autumn 2006...

The CRDTG faces some tough challenges...

*CRTDG website:
http://europa.eu.int/comm/internal_market/bank/regcapital/transposition_en.htm*

guarantee scheme under so-called "topping up" arrangements, although this is not obligatory.

Until recently, such arrangements had not given rise to significant concerns by Member State authorities, given the very low levels of cross-border deposit-taking activity. However more recently, and in light of the current wave of cross-border banking mergers and acquisitions, some Member States have begun to question whether the current framework is still adapted to the market reality – especially as the existing fragmentation of schemes has been blamed for impeding consolidation of banking groups. It has also been questioned whether the current heterogeneous situation would be able to withstand a potential banking crisis with cross-border dimensions.

A quantitative study published last November in cooperation with the Joint Research Centre (ISPRA) has proved inconclusive as regards the need to adjust the €20,000 minimum guarantee threshold – especially in light of the recent enlargement of the EU. Further quantitative work is currently being carried out aimed at assessing the costs of potential changes to the way in which schemes are funded.

The Commission plans to publish a Communication which will include the results of the review and make recommendations about possible further action in Autumn 2006. If changes are made to the existing set-up, they will be on the basis of "evolution not revolution". Progress in this area is closely linked to progress in a number of other areas affecting supervisory arrangements – liquidity, crisis management, lender of last resort, winding up and bankruptcy.

Capital Requirements Directive: progress report from the Transposition Group

The CRD Transposition Group is tasked with identifying common solutions to issues in connection with the transposition of the recently agreed Capital Requirements Directive. On March 13, the CRDTG held its 2nd meeting.

The Group has so far received 51 questions, most of them posed by supervisors. 9 answers have been published on the website.

The CRDTG faces some tough challenges, not least because the number of questions is increasing as is the relative complexity of the underlying technical issues.

A major challenge is how to speed up the process while maintaining as high as possible quality of answers and improving the transparency of final answers. This involves circulating the full set of comments for questions and attempting to achieve a consensus through written procedure. The Group also discusses specific questions and agrees on either final wording of answers or practical ways forward to reach an agreement in due course.

At the March meeting, the Commission services presented a further set of questions on which members' initial reactions and red flags, if any, were requested and updated the Group about an answer recently sent to CEBS in respect of mutual recognition of national

discretions under Article 129(2) of Directive 2000/12/EC. Group members also met with representatives from 9 industry associations to provide an update on the work of the Group. The industry reaffirmed its support for the project and praised the transparency of the process. However, industry representatives also stressed the fact that the process was at a preliminary stage of domestic implementation, which was the main reason they had not yet submitted many questions directly to the Group. They suggested some issues that may be relevant for the CRDTG's future work, e.g., CRD consistency with data protection regulation, more general home-host issues, as well as on the implementation of the securitisation framework.

The Basel Committee on Banking Supervision (BCBS) is being kept informed of the work carried on by the CRDTG. CEBS has also confirmed its support for the work the Group is carrying out, and has developed an internal process to handle the categorisation process with the Commission services.

Basel Committee: update on QIS 5 and US implementation delays

On March 8 and 9 the Basel Committee on Banking Supervision (BCBS) met in Basel. Members were updated on the latest Basel II impact assessment exercise (the so called QIS 5) which involves 225 and 154 banks from G10 and Non-G10 countries respectively. In particular, it was stressed that while data collection may have been finalised, full data analysis has not yet started. Very preliminary results show some decrease in minimum required capital for the largest participating G10 banks.

The BCBS also discussed cross-border implementation issues, in particular relating to the US decision to delay Basel II implementation to January 1, 2009. US supervisory agencies informed other members that the draft Notice of Proposed Rulemaking for the Basel II framework might be available by early April. The draft set of regulatory provisions for smaller banks (the so called Basel IA) will be available at a later stage. However, some overlapping in the comment period would occur.

BCBS members also met with some representatives from the Institute of International Finance (IIF), who confirmed industry's concerns stemming from the mismatch in implementation plans between the United States and the other G10 countries.

EU-US: Discussions with US authorities

At the end of January the latest session in the ongoing Financial Markets Regulatory Dialogue was held, in Washington. The Commission services discussed a broad range of issues with representatives of the US Treasury and US supervisory agencies. From the perspective of the EBC, the most important issues discussed were US plans for the implementation of Basel II, equivalence of supervision, and (although not within the EBC's remit)

The Commission is calling on US authorities to engage with EU banks on problem of Basel II implementation delay...

Bulgaria and Romania - the acceding countries...

Croatia and Turkey - the candidate countries...

*Further information on enlargement issues can be found on DG ELARG's website at the following address:
http://europa.eu.int/comm/dgs/enlargement/index_en.htm*

plans for convergence in accounting standards.

On Basel II, given the different in implementation dates (see "Basel Committee" above) the Commission services have stressed to the US authorities the importance of them engaging with EU banks on the problems the industry faces as a result of the US delay.

This message was repeated by Commissioner Charlie McCreevy when he visited the US in early February. The Commissioner and US Treasury Secretary John Snow reiterated the view they first expressed in November 2005: that issues arising from the delay in US implementation of Basel II can be addressed in a sensible and pragmatic way, and that supervisors and industry need to work together – bilaterally and multilaterally - to achieve this.

Enlargement: Accession negotiations high on the Commission's agenda

The current enlargement agenda covers South-East Europe and consists of the Balkans and Turkey, as defined by the EU leaders in the European Council. The EU has given all these countries the prospect of EU accession once they can meet the strict conditions.

The Treaty of Accession with Bulgaria and Romania was signed in April 2005 and now needs to be ratified by all 25 EU Member States. The Accession Treaty includes the rigorous monitoring mechanism and safeguard clauses, which have encouraged both countries to undertake a significant reform drive. In May 2006, the Commission will reassess the situation and may recommend membership in 2007, or alternatively postponing accession until 2008. The decision will be made by the June 2006 European Council.

The Commission began screening the chapters for accession negotiations with Turkey and Croatia in October 2005. The Progress Report analyses where the countries stand, and the Accession Partnerships set short-term and medium-term goals to address the identified problems. For both candidate countries, an explanatory meeting for the financial services chapter (chapter 9) will take place at the end of March 2006 in Brussels. During this meeting the principles of home country control/Single European Passport and the Lamfalussy approach will be explained as well as the respective acquis of each sector – banking (including the new CRD), insurance, and securities.

The negotiation processes with Croatia and Turkey have already taken off with full-day screening sessions. These are highly labour intensive activities where the Commission explains the acquis to the candidate countries and where one month later each country explains for a given sector how it intends to align with the acquis. It is clear that in the Spring the first negotiation Chapters will be opened with these countries, which will lead to a further acceleration of work on enlargement.

Comitology: update on the latest state of play

Directive 2000/12/EC governs the taking up and pursuit of the business of credit institutions. Article 2, paragraph 3 of the Directive lists the credit institutions which are excluded from the scope of application of the Directive.

In 2005, the Commission received requests from three Member States for changes to the current list. Denmark has requested the Mortgage Credit Association of Municipalities (KommuneKredit) to be taken up into the list. Greece has requested the deletion of Ellinki Trapeza Viomichanikis Anaptyxeos and Tachidromiko Tamieftirio from the list. Finland has requested to replace the listing of Kera OY/Kera Ab with that of FinnveraOyJ/Finnvera Abp. These amendments are needed in order to take into account changes in the nature of the credit institutions concerned.

The technical adaptations to the list of exempted credit institutions are adopted by the Commission under the Comitology procedure. In accordance with the applicable provisions, the draft Commission Directive was approved by the European Banking Committee at its meeting of 8 November 2005. The European Parliament was informed of the proposed amendment on 24 October 2005 and raised no objections to the proposal.

Consequently, the College of Commissioners adopted the Directive amending the list by written procedure on 8 March 2006. The Directive was published in the Official Journal on 9 March 2006 (OJ L/70 of 9.03.2006, page 50).

Supervision under the third Anti-Money Laundering Directive

The 3rd Anti-Money Laundering Directive (Directive 2005/60/EC) was published on 25 November 2005 (OJ L 309, p.15) and entered into force on 15 December 2005. The Directive repeals the former 1991 Directive, as modified in 2001, and Member States have until 15 December 2007 to implement into their national legislation.

The Directive prohibits money laundering as well as terrorist financing and is applicable to both the financial sector as well as to lawyers, notaries, accountants, real estate agents and casinos, trust and company service providers and all providers of goods (when payments are made in cash in excess of € 15.000). These entities need (a) to carry out customer due diligence; (b) to report suspicions on money laundering and terrorist financing to the national financial intelligence unit (FIU); and (c) to take supporting measures, such as to keep records of transactions and business relationships, to regularly train their personnel and to establish appropriate internal policies and procedures in relation to (a) and (b). Finally, the Directive contains a series of provisions related to supervision by national authorities and provides for the Commission to be able to adopt implementing measures with regard to certain selected issues.

Directive 2006/29/EC can be accessed at the following address:

<http://europa.eu.int/eur-lex/lex/JOhtml.do?uri=OJ:L:2006:070:SOM:EN:HTML>

What does the directive say?

What is the role of the supervisors under the new directive?

How can possible competitive distortion within the EU financial market be avoided?

For that purpose, the Directive establishes a regulatory committee (the Committee on the Prevention of Money laundering and Terrorist Financing).

The Directive requires supervision/ monitoring of the compliance with the requirements of the Directive. Generally, the supervisors of the financial institutions have been allocated this task. If requirements are not met, penalties need to be applied. Credit institutions, life insurance companies and intermediaries, investment firms and investment funds amongst others are entitled to apply a risk-based approach in respect of the customer due diligence measures they take vis-à-vis their customers or the beneficial owners of their customers (i.e. the identification/verification of the customer/beneficial owner and the monitoring of the customer/transactions). Institutions and persons covered by the Directive need to demonstrate to their supervisors that the risk-based measures they have adopted in respect of the customer due diligence obligations are appropriate in view of the risks of money laundering and terrorist financing.

To prevent possible competitive distortion, it is desirable that supervisors throughout the EU operate in a coordinated manner with regard to the supervisory aspects of the 3rd Anti-Money Laundering Directive. Therefore, it is important that supervisors co-ordinate their actions and use similar models to assess risk-based approaches which have been or will be put in place by the financial institutions. CEBS could play a vital role in this respect.

News in Brief

New EBC Working Group on Large Exposures

As outlined in the paper prepared for the EBC meeting of November 8th 2005 'Information paper for EBC on Large Exposures' (EBC/022/05) and subsequently agreed to by written procedure, an EBC Working Group on Large Exposures (WGLE) is in the process of being formed.

An e-mail request for nominations for the new group was sent on February 28th for response by March 17th. The work of the Working Group will commence through written correspondence and a date for the first meeting will be set later.