GENERAL SUPERVISION AND INTERNATIONAL COOPERATION

1. General Supervision
2. Cooperation at EU level
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1. GENERAL SUPERVISION

The department “General Supervision” (SGE) was restructured in early June 2009 and comprises 19 agents (22 agents as from 1 April 2010) divided into four divisions which are described below in detail.

Each division of the department, apart from division 4, is responsible, within its given area, for the development and interpretation of national and international regulation, for the processing of general issues on the methodology of prudential supervision, for the rules of conduct and professional obligations in the financial sector as well as for the elaboration of global studies on professionals of the financial sector, the markets and financial products. Division 4 is responsible for the planning, coordination and carrying out of on-site inspections.

In 2009, the SGE sent 438 letters outlining the CSSF’s position with respect to prudential and accounting supervision. SGE agents attended 212 meetings of international bodies and 49 meetings held in Luxembourg with representatives of the banking industry and international bodies. As in previous years, SGE agents were also asked to draft circulars or preparatory texts for new laws.

1.1. Division 1: International matters

This division deals with all the international files relating to the CSSF’s mission, among which in particular those dealt with by the following bodies: the European Commission, the European Council, CEBS, CESR, CEIOPS, IOSCO, OECD, the Basel Committee and the European Central Bank.

Consequently, this division prepares instructions and circulars as well as the implementation of international regulation into national law.

During 2009, division 1 focused mainly on the participation in international groups which it follows up on and which are described in detail at points 2. and 3. of this Chapter. Its activities focused on working groups of the European Commission, the European Council, CEBS and CESR. The agents of division 1 also worked on the implementation of European directives and guidelines of committees, such as CESR or CEBS, as circulars or draft laws. Division 1 also worked together with division 6 of the department “Supervision of banks” on a mission relating to the validation of advanced approaches for a bank.

1.2. Division 2: Accounting, reporting and audit

This division is responsible for the follow-up at national level (Commission des Normes Comptables, Luxembourg Central Bank) and international level (European Commission, European Council, CEBS, CESR, IOSCO, Basel Committee, EFRAG) of all regulation relating to (1) accounting and financial information to be disclosed by professionals of the financial sector and by listed companies and (2) audit matters in relation to supervision of entities in the financial sector.

The division prepares instructions, circulars and draft laws on reporting and accounting by professionals of the financial sector, the design of new prudential tables and the new definition of the structure and content of existing tables. The division also deals with issues relating to accounting and financial information to be disclosed and prudential reporting.

Until the end of 2009, the division was responsible, together with the department “Supervision of securities markets”, for the enforcement of financial information of companies admitted to trading on the regulated market of the Luxembourg Stock Exchange. This task has, from 2010, been taken over by the department “Supervision of securities markets”.

Finally, the division is responsible for all questions relating to the elaboration and definition of the content of analytical reports prepared by réviseurs d’entreprises agréés (approved statutory auditors). The division is also responsible for the centralisation of information concerning réviseurs d’entreprises agréés which are authorised to audit the accounts of professionals of the financial sector and for processing, together with the departments concerned, the authorisation requests for réviseurs d’entreprises agréés wishing to audit the accounts of professionals of the financial sector.
During 2009, division 2 contributed to the CEBS works on the FINREP reporting scheme. This task consisted in responding to industry expectations on the harmonisation of reporting obligations in view of a diminution of the administrative burden and to achieving convergence of reporting obligations between the different supervisory authorities in the EU.

Division 2 also examined financial information by issuers of securities (enforcement) in application of Chapter II of the law of 11 January 2008 on transparency requirements for issuers of securities. In 2009, the division examined the published accounts of several issuers of securities and it intervened with these issuers to obtain further information and explanations. Following this examination, modifications were required in a few specific cases.

1.3. Division 3: Rules of conduct, crisis management and financial stability

The mission of division 3 concentrates on the methodology, on global studies and on assisting other departments on matters which require specific knowledge and expertise. Within the context of its mission, the division ensures the follow-up of principles and standards commonly accepted in corporate governance and compliance with rules of conduct which stem, *inter alia*, from Community texts.

The division also contributes to the drawing-up of crisis management procedures and the organisation of crisis simulation exercises.

The division, together with the relevant departments, follows up on issues regarding the safeguard of financial stability and, consequently, maintains the relations with other authorities which contribute to the safeguard of financial stability.

Finally, it contributes to the reform of the deposit guarantee scheme and arranges the implementation of the reformed system within the relevant legislative context.

During 2009, division 3 first started its study necessary to reform the deposit guarantee scheme. The division also undertook twelve on-site inspections testing MiFID compliance. It was thus noted that in certain situations the client suitability test was not performed prior to the provision of an asset management service. In another case, trailer fees by a legal entity belonging to the group had not been disclosed to the clients. Following the CSSF’s intervention, the institutions concerned took the necessary measures to comply with the MiFID provisions.

1.4. Division 4: On-site inspections / on-site visits

In the midst of the controversial debates both on a national and an international scale, on the optimisation of prudential supervision, following the financial crisis which hit the world during 2008, the CSSF’s Executive board decided to further direct its prudential supervision on-site and to show an increased presence in the field with players in the Luxembourg financial market. A team specialised in on-site inspections, division 4, was therefore set up on 1 June 2009.

The CSSF had of course, before the setting in place of the specialist division, undertaken on-site inspections according to a yearly plan. Nevertheless, these missions were always performed by the relevant supervisory department. As a result of the new organisation, the CSSF can now, on the one hand, increase the number of on-site inspections and, on the other hand, organise a new type of “transversal” or “thematic” enforcement missions. The transversal missions will thus allow for peer group reviews and for comparisons between different players in the financial market. The ultimate objective of these missions shall be to lay down best practices regarding the organisation of financial activities and equally in terms of prudential supervision.

To the extent that it is supposed to collaborate with all the other supervisory departments of the CSSF, division 4 has been attached to the department “General Supervision”. Over and above the transversal inspections referred to above, to which agents from the various supervisory departments and the Legal Department may participate, division 4 concentrates in particular on inspections of newly authorised professionals.
Division 4 can also be asked to undertake or to participate in unexpected ad hoc missions. During such a mission, the accent can be laid on the dialogue with the financial institution or on the prudential supervision, depending on the exact nature of the inspection.

During 2009, division 4 developed its concept and gave itself procedures in order to ensure the proper performance of its mission. Whereas the division only counted two agents at the end of 2009, it will reach a total of five agents by 1 April 2010. During the recruitment process, the emphasis was laid on experience in the professional sector, which exceeds ten years for each member of division 4.

During the year in progress, division 4 undertook 29 on-site inspections. Of these missions, 19 were “on-site visits” of professionals newly authorised during 2008 and 2009, together with the departments “Supervision of investment firms”, “Supervision of other PFS” and “Information systems and supervision of support PFS”.

Nine ad hoc missions were carried out, of which four with the department “Supervision of investment firms”, two with the department “Supervision of banks”, one with the department “Supervision of securities markets”, one with the department “Supervision of pension funds, SICARs and securitisation undertakings” and one with the department “Supervision of UCIs”.

One transversal mission on the fight against money laundering and terrorist financing was carried out in cooperation with the department “Supervision of banks” and with the Legal Department.

2. COOPERATION AT EU LEVEL

Article 3 of the law of 23 December 1998 creating a Commission de Surveillance du Secteur Financier, appoints the CSSF, inter alia, to deal with and participate in the negotiations concerning the financial sector issues, at both EU and international level. In accordance therewith, the CSSF participates in the work of the following forums.

2.1. Committee of European Banking Supervisors (CEBS)

The Committee of European Banking Supervisors (CEBS) was established by Commission Decision 2004/5 EC of 5 November 2003, which has in the meantime been replaced by Commission Decision 2009/78/EC of 23 January 2009. Its duties encompass reflecting, discussing and giving advice to the European Commission in the fields of banking regulation and supervision.

Mr Giovanni Carosio (Banca d’Italia, Italy) holds the chair of CEBS. He is assisted by Mr Thomas Huertas (Financial Services Authority, UK) as Vice-President. Mr Arnoud Vossen (De Nederlandsche Bank, Netherlands) is General Secretary. The Committee’s Secretariat is based in London.

CEBS’ mission is to advise the European Commission either at the Commission’s request, within the time limit that 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 and financial conglomerates.

CEBS is moreover concerned with enhancing cooperation between supervisory authorities in the field of banking and fostering the convergence of Member States’ supervisory practices and approaches throughout the Community. In this context, Commission Decision of 23 January 2009 lays down that CEBS shall carry out, at least, the following tasks:

- mediate or facilitate mediation between supervisory authorities in cases specified in the relevant legislation or at the request of a supervisory authority;
- provide opinions to supervisory authorities in cases specified in the relevant legislation or at their request;
- promote the effective bilateral and multilateral exchange of information between supervisory authorities subject to applicable confidentiality provisions;
- facilitate the delegation of tasks between supervisory authorities, in particular by identifying tasks which can be delegated and by promoting best practices;
- contribute to ensuring the efficient and consistent functioning of colleges of supervisors in particular through setting guidelines for the operational functioning of colleges, monitoring the coherence of practices of the different colleges and sharing best practices;
- contribute to developing high-quality and common supervisory reporting standards;
- review the practical application of the non-binding guidelines, recommendations and standards issued by the Committee.

Since the 2009 Decision, the Committee has been given the specific mission to monitor and assess developments in the banking sector, and, where necessary, inform the Committee of European Securities Regulators (CESR), the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) and the European Commission. In this context, CEBS shall also ensure that the finance ministries and the national central banks are informed about potential or imminent problems.

CEBS shall, at least twice a year, provide assessments to the European Commission of micro-prudential trends, potential risks and vulnerabilities in the banking sector. The Council of Finance Ministers shall also be informed of CEBS’ assessments.

The 2009 Decision also invites CEBS to ensure an adequate coverage of cross-sectoral developments, risks and vulnerabilities by closely cooperating with CESR and CEIOPS and the Banking Supervision Committee of the European System of Central Banks.

In addition to its guidelines and other documents worked out by its permanent working groups, which are set out in more detail below, the following CEBS publications deserve mentioning.

On 20 April 2009, CEBS published a finalised set of principles for remuneration policies in banking institutions, put together by the Internal Governance Task Force. The principles address key aspects of well functioning remuneration policies and thus support the sound application of these policies within the day-to-day operation of banks. The scope of the principles covers remuneration policies throughout organisation without focusing exclusively on executive pay or severance pay. The principles focus on the following, among others:

- improved alignment of the banking institution’s and the staff’s objectives;
- increased transparency of remuneration policies, both internally and externally;
- sound governance with respect to oversight and decision-making;
- adapted measure of realised performances with a view to variable remuneration;
- appropriate mechanisms with respect to payment arrangements.

Following a public consultation launched on 17 September 2009, CEBS published Revised Guidelines on Supervisory Disclosure on 28 January 2010, which had been put together by the Task Force on Supervisory Disclosure. The Revised Guidelines seek in particular to extend the prudential reporting tables to other fields: acquisitions and increases in participation, securitisation, credit risk mitigation and large exposures. It is intended to transpose these changes by the end of March 2010. It should be borne in mind that the publication of information in the context of supervisory disclosure as developed by CEBS in relation to the transposition of Directives 2006/48/EC and 2006/49/EC (CRD) has been implemented since 2007 on the websites of CEBS and of the supervisory authorities of the EU Member States.
Following calls for advice to the European Commission concerning the CRD, CEBS published its advice on retention requirements for securitisations, on national options and discretions as well as on the exchange of information between home and host supervisors of branches.

CEBS, together with CESR and CEIOPS, published advice on the review of Directive 2002/87/EC (financial conglomerates) drafted by the Joint Committee on Financial Conglomerates.

All these publications are available for consultation on CEBS’ website (www.c-ebs.org).

The works of the permanent sub-working groups (Groupe de Contact, Review Panel, Expert Group on Financial Information and Expert Group on Prudential Regulation) and the main works to which CEBS contributes together with other committees are briefly set out below.

2.1.1. CEBS - Groupe de Contact

Since its inception in 1972, the Groupe de Contact has been used as forum for informal cooperation between banking supervisory authorities at EU level. The Groupe de Contact acts as general CEBS working group within the structure of European regulation in the banking industry. In that capacity, it contributes to enhance convergence of the prudential supervisory practices in the EU.

The Groupe de contact continues to be a platform appreciated for informal exchanges concerning the situation of individual credit institutions, particularly in the event of problems. The Groupe keeps up with the developments in national regulations and discusses the practical aspects of the prudential supervision of banks.

In 2009, the Groupe de contact continued to focus on the implementation of the supervisory review process, Pillar 2 of the new capital adequacy framework, convergence and cooperation between supervisory authorities.

The works done in 2009 by the sub-working groups are also worth mentioning. Thus, the works of the Task Force on Internal Governance culminated, in April 2009, in the publication of the “CEBS principles on remuneration”. The group’s follow-up for 2010 will focus on the application of these principles by banks and supervisory authorities. As a result of the works of the Liquidity Risk Management Task Force, CEBS published the document entitled “Liquidity identity card” as well as the “CEBS Guidelines on Liquidity buffers”. The work done by the Supervisory Operational Network (SON) led CEBS to launch a public consultation on 17 December 2009 on the Guidelines for the operational functioning of colleges. The application of this practical document is meant to lead to a closer cooperation between supervisory authorities which are responsible for the most important European banking groups. In this context, the proposals put forward by the Crisis Management Task Force on procedures governing colleges in the context of crisis management were integrated into the consultation document mentioned above.

Another important aspect of the Groupe de contact’s responsibilities concerns the exchange of information regarding specific problems encountered by one or several authorities on topical issues. This exchange of information between members, as well as between the Groupe de contact and CEBS, continued in 2009.

2.1.2. CEBS - Review Panel

The Review Panel is responsible for assisting CEBS in its task to ensure consistent and harmonised implementation of EU legislation in the Member States. The main role of the Review Panel is to analyse the degree of convergence reached by the supervisory authorities in their implementation of the provisions laid down in Community legislation and CEBS documents, with the purpose of promoting a day-to-day consistent application thereof and of enhancing supervisory convergence within the European Economic Area.

To this end, the peer review exercises are conducted on a self-assessment basis on specific topics, on compliance with Community legislation or CEBS guidelines.

In early 2009, the Review Panel finalised a peer review, commenced during 2008, relating to the validation of advanced approaches (internal-ratings based approaches for credit risk and advanced measurement approaches for operational risk) within cross-border groups, focusing on collaboration between competent authorities of the Member States concerned. The final report was published in April 2009.
During the second half of 2009, the Review Panel assessed the sound functioning of the colleges of supervisors in the context of supervision of cross-border groups. The peer review phase of this self-assessment will take place in 2010.

2.1.3. CEBS - Expert Group on Financial Information (EGFI)

The expert group assists CEBS in achieving its work programme as regards financial information, including the fields of accounting, prudential reporting and auditing.

The expert group’s main activities are set forth below according to their different working subgroups or working groups.

- **Subgroup on Accounting**

The objective of this subgroup is to monitor, assess and comment on the developments of international accounting standards. This subgroup thus forwarded several comment letters to the International Accounting Standards Board (IASB) on IASB projects, including in particular the measures proposed by the IASB in the context of the financial crisis. The subgroup furthermore undertook a survey with banks in order to collect quantitative data on prudential filters. The resulting report was approved by CEBS in October 2009. The proposals put forward by this report which aim to further harmonise the prudential filters shall be reviewed by the subgroup once the final review of the definition of “capital” and the accounting developments relating to IAS 39 have been finalised.

- **Subgroup on Reporting**

The subgroup has the following missions:

- see to the proper transposition of the guidelines and standards published by CEBS on common European reporting frameworks FINREP and COREP, including the development of XBRL taxonomies;
- answer questions concerning the practical application regarding the implementation of these frameworks;
- assess the impact of changes to international accounting standards and European regulation for capital adequacy on these frameworks;
- where necessary, propose updates to the reporting schemes.

In response to the industry’s expectations regarding the harmonisation of the requirements on financial reporting to reduce the administrative burden and to streamline reporting requirements by supervisory authorities within the EU, the subgroup is working on a reduced and harmonised version of the FINREP and COREP schemes.

On 15 December 2009, CEBS published a provisional revised version of the FINREP reporting framework (FINREP rev 2) which shall apply from January 2012. This provisional version shall be reviewed in order to take into account the changes to the international standard IAS 39, announced in 2009 by the IASB. An XBRL taxonomy developed for FINREP rev 2 was published in early 2010 and is available on the website www.eurofiling.info.

On 6 January 2010, CEBS published a revised COREP version which takes into account the changes to Directives 2009/27/EC, 2009/83/EC and 2009/111/EC (CRD II) and shall be applicable from 31 December 2010.

In addition, the subgroup is working on a project aiming at harmonising the reporting framework COREP (format, frequency and harmonised reporting dates), applicable as from 31 December 2012.
• **Subgroup on Transparency**

In 2009, the subgroup published three documents containing the valuation results of the financial statements published by credit institutions in their results for the fourth quarter of 2008 and the preliminary results for the end of the year, in their audited annual report for 2008 and their report for Pillar 3. The subgroup also published the consultation document “Disclosure Guidelines: Lessons learned from the crisis”, submitted to public consultation until 15 January 2010.

• **Subgroup on Auditing**

The subgroup assists CEBS by monitoring the developments at Community and international level in the area of audit and statutory audit in order to assess the consequences thereof from a banking supervisory standpoint.

• **Task Force on Pro-cyclicality and Accounting**

This task force was set up in order to work on the issue of the pro-cyclicality of the Basel II rules and drafted an interim report entitled “Pro-cyclicality and accounting”. In October 2009, CEBS approved the conclusions contained in this report, among which in particular the recommendation to analyse the IASB proposals in further detail and their relevance in terms of reduction of pro-cyclicality. The report was sent to the European Commission.

### 2.1.4. CEBS - Expert Group on Prudential Regulation (EGPR)

As in previous years, the EGPR dedicated a substantial amount of its time to the issues of large exposures and capital instruments in 2009.

As regards large exposures, the EGPR developed the “CEBS Guidelines on the Revised Large Exposure Regime” aiming to complete certain provisions of Directives 2006/48/EC and 2006/49/EC (CRD) as amended by Directive 2009/111/EC, and in particular the definition of “connected clients”, the treatment of structured products with underlying assets including UCITS and reporting requirements for large exposures. These guidelines were published on 11 December 2009.

The EGPR specified the conditions to be fulfilled for capital instruments to be eligible as original own funds. The “CEBS Guidelines on Hybrid Capital Instruments” were published on 10 December 2009. The group also worked out a consultation document on capital instruments which fall under Article 57(a) of Directive 2006/48/EC as amended. It refers to capital instruments eligible without limit for inclusion in the original own funds.

On the issue of operational risk, the EGPR published the “CEBS Guidelines on Operational Risk Mitigation Techniques” on 22 December 2009, as well as a consultation document dealing specifically with market activity.

The group also contributed to advice given by CEBS to the European Commission (in particular as regards securitisation) as well as to other CEBS publications in order to assess prudential implications.

In order to keep the number of working groups operating under EGPR’s umbrella to a minimum, the group adopted a new structure made up of four permanent working groups (capital requirements, credit risk, market risk, operational risk) which now encompass the ad hoc groups set up in previous years.

### 2.1.5. Joint Committee on Financial Conglomerates (JCFC)

The Joint Committee on Financial Conglomerates is the forum in which CEBS and CEIOPS have cooperated in matters regarding the supervision of financial conglomerates since the end of 2005. JCFC members are high-level representatives of the banking and insurance supervisory authorities of Member States of the EU and the European Economic Area. The European Commission and the European Central Bank shall be invited to the meetings of the JCFC as observers whereas CESR can participate in the JCFC meetings.

The Committee has the following functions:
- to assess results of the transposition of Directive 2002/87/EC on financial conglomerates and to contribute to its coherent application;
- to advise the European Commission, either at its own request or at the Committee’s own initiative;
- to contribute to the review of the Directive on financial conglomerates;
- to contribute to the convergence of practices employed by national supervisors, particularly with regard to capital requirements, intra-group transactions and concentration risk;
- to facilitate the cooperation and coordination between supervisory authorities.

During 2009, the Committee’s four meetings mainly focused on the finalisation of the technical advice to the European Commission on the review of the Financial Conglomerates Directive which had been prepared by its working group, the Financial Conglomerates Review Working Group (FRWG). After the approval by CEBS and CEIOPS, the final draft was sent to the European Commission on 30 October 2009 and published on the CEBS and CEIOPS websites.

The JCFC, by dealing with four key issues, provides possible solutions to the problems identified, underlines their advantages and disadvantages and, eventually, puts forward recommendations. The legal changes proposed or the areas and notions likely to be clarified by Level 3 guidelines cover in particular the definition of the different types of holding companies and the definition of the notion of “financial sector” (inclusion of management companies in the identification of financial conglomerates, application of the thresholds determining financial conglomerates). In this context, it should be noted that a more fundamental review of the Financial Conglomerates Directive is due to commence in 2010.

In 2009, the JCFC also completed its yearly update of the list of groups identified as financial conglomerates which is published on the website of the European Commission. A contribution by the JCFC to the 3L3 Task Force on Cross-Sectoral Risks also included the identification and assessment of the risk of contagion in the context of financial conglomerates.

### 2.1.6. BSC – CEBS Joint Task Force on the Impact of the new Capital Framework (JTFICF)

The joint task force of CEBS and the BSC (Banking Supervision Committee) is interested in the cyclicality of the components of the Basel II solvency ratio and assesses the potential impacts of the Basel II regulations on the pro-cyclicality of credit markets.

In 2009, the task force also undertook two empirical studies on the impact of the Basel II regulations on the components of the prudential ratios. The task force equally developed a first set of analyses which should permit to analyse the possible pro-cyclicality of the Basel II regulations.

### 2.2. Committee of European Securities Regulators (CESR)

The Committee of European Securities Regulators (CESR) is composed of representatives of 29 supervisory authorities of securities markets in the European Economic Area (Member States of the EU, Norway and Iceland). CESR is an independent body, which assists the European Commission in preparing implementing measures relating to Community legislation on transferable securities and is entrusted with ensuring the harmonised and continuous application of Community legislation in the Member States. CESR also works towards improving coordination among supervisory authorities. Since January 2007, Mr Eddy Wymeersch (Commission bancaire, financière et des assurances, Belgium) chairs CESR. Mr Carlos Tavares (Comissão do Mercado de Valores Mobiliários, Portugal) is CESR’s Vice Chairman. CESR’s Secretariat is based in Paris.

Like for CEBS, the initial decision by the European Commission setting up CESR was repealed and replaced in 2009 by Decision 2009/77/EC which lays down, mutatis mutandis, the same general and specific principles for CESR in the field of transferable securities as those laid down for CEBS in the field of banking (cf. point 2.1. above).
In 2009, CESR continued its Level 3 works by drawing up recommendations, standards, common interpretations and procedures for the practical cooperation in different areas in order to enhance regulatory convergence at European level. In this context, CESR also organised a conference on 23 February 2009 on the future of legislation in the sector of financial markets.

The Market Consultative Panel, a committee comprising 17 market participants appointed in a personal capacity, among which one Luxembourg representative, is charged with assisting CESR. The committee’s three meetings mainly dealt with the financial crisis, remuneration, the future European regulatory framework for financial markets, short selling, the regulation of alternative investment fund managers, compensation practices and packaged retail investment products (PRIPs).

Following the adoption of new guidelines for its working groups, CESR counts eight working groups since January 2010, namely: the CESR Standing Committee on corporate reporting, the CESR Standing Committee on corporate finance, the CESR Standing Committee on credit rating agencies, CESR-Pol, the CESR Standing Committee on secondary markets, the CESR Standing Committee on post-trading, the CESR Standing Committee on investor protection and intermediaries and the CESR Standing Committee on investment management.

2.2.1. CESR Review Panel

The Review Panel is responsible for assisting CESR in its task to ensure consistent and harmonised implementation of EU legislation in the Member States.

On 1 July 2009, the Review Panel published its report and conclusions on the powers of supervisory authorities in the context of the Transparency Directive.

The Review Panel finalised its peer review of the transposition and application of the competent authorities’ enforcement powers as regards financial information to be provided by issuers (Standard no. 2). The Member States’ final self-assessment report on the implementation and application of Standard no. 2 (CESR/09-212) as well as the peer review (CESR/09-188) were published on 6 July 2009.

The Review Panel finalised its review on the implementation of the CESR principles concerning the financial information to be provided by issuers and the competences and powers of the authorities in this respect (Standard no. 1), undertaken in 2006. The updated report on Member States’ self-assessment as well as the peer review (CESR/09-374) were published on 25 September 2009.

The Review Panel also worked on the comparison of the implementation and application of options and discretions as well as gold plating in the context of the Market Abuse Directive and of its implementing measures as well as the Directive on Markets in Financial Instruments (MiFID) and its implementing measures.

The Review Panel also undertook some selective comparative work on certain areas of the Prospectus Directive.

The peer review of the implementation and application of CESR’s guidelines to simplify the UCITS notification procedure was published on 29 January 2010.

All the documents are available on CESR’s website (www.cesr.eu).
2.2.2. Operational groups established within CESR

- **CESR-Fin**

CESR-Fin is the permanent operational committee that coordinates CESR’s work in all financial reporting areas in Europe. In 2009, the committee met six times.

On 7 January and 15 July 2009 respectively, CESR-Fin published two documents relating to changes to standards IAS 39 and IFRS 7 which were introduced by the IASB on the reclassification of financial instruments other than those “valued at fair value by their results” entitled “CESR statement on the reclassification of financial instruments and other related issues” (CESR/08-937) and “CESR statement on the application of and disclosures related to the reclassification of financial instruments” (CESR/09-575).

On 2 November 2009, CESR-Fin published the document entitled “CESR statement on the application of disclosure requirements related to financial instruments in 2008 financial statements” (CESR/09-821) which analyses the application by publicly traded companies of mandatory disclosure requirements of financial information in accordance with IFRS 7 and additional recommendations on disclosure on a voluntary basis.

CESR-Fin also finalised several comment letters prepared by its working group Project Group on IFRS regarding the IASB projects, either by commenting on the response of the European Financial Reporting Advisory Group (EFRAG), or by responding directly to the IASB.

As regards audit, CESR-Fin published a comment letter (CESR/09-766) on the consultation by the European Commission on the adoption of International Standards on Audit (ISA) within the EU on 22 October 2009.

**CESR-Fin activities at international level**

CESR-Fin regularly organises joint meetings with members of the IASB, either directly or via its the Project Group on IFRS. In August 2009, CESR-Fin’s secretariat participated in a number of Technical Dialogue Meetings organised by the IASB with a view to meeting on a more regular basis with regulators and representatives of prudential supervision. CESR-Fin also took part in various round tables on financial instruments organised by the IASB and on the constitutional review organised by the International Accounting Standards Committee Foundation (IASCF).

Since the beginning of 2009, CESR-Fin has participated in two consultative groups the object of which is to discuss matters relating to fair value and the relation between fair value and the financial crisis. These are on the one hand the Financial Crisis Advisory Group (FCAG), a joint group of the IASB and the Financial Accounting Standards Board (FASB), and on the other hand the ECOFIN Working Group on Pro-cyclicality.

CESR-Fin’s activities also include regular meetings with the Securities and Exchange Commission (SEC), the financial reporting supervisory authority of the United States. The subjects discussed include, *inter alia*, enforcement measures for the correct application of financial information reporting standards, projects relating to the IFRS standards of the IASB as well as the use of XBRL taxonomies.

**CESR-Fin activities at EU level**

The European Commission and CESR-Fin met on several occasions to discuss, among others, the proposed amendments by the IASB relating to financial instruments, the IASCF Monitoring Board and the equivalence of third-country financial information accounting standards.

CESR-Fin is in regular contact with EFRAG and takes part as observer. Equally, the President and/or EFRAG members are invited regularly to CESR-Fin meetings.

*European Enforcers Coordination Sessions (EECS)*

The main role of this CESR-Fin subgroup is to analyse decisions taken by national authorities in the European Economic Area responsible for the correct application of financial information reporting standards (enforcement) as well as emerging or urgent cases which the supervisory authorities are faced with during the exercise of their duties. The group met seven times in 2009.
CESR published a seventh extract of the decisions from the EECS database on 16 December 2009. As at 31 December 2009, 306 decisions were listed in the EECS database.

In December 2009, EECS organised a seminar on the enforcement activities in Europe and in the rest of the world.

• CESR-Pol

CESR-Pol’s purpose is to enhance the sharing of information, cooperation and coordination of supervision between CESR members and to ensure an effective day-to-day implementation of the Market Abuse Directive at Level 3 of the Lamfalussy procedure.

As a result of the mandate received by CESR’s Chairmen, CESR-Pol finalised the works commenced in 2007. Thus, the document (CESR/09-219) containing detailed guidance on the lists of insiders, suspicious transactions reporting, stabilisation and buy-back regimes as provided for in Regulation (EC) No 2273/2003 and the two-fold notion of “inside information” contained in Directive 2003/6/EC on insider dealing and market manipulation was published on 15 May 2009.

The working group set up by CESR-Pol continued the efforts for coordination of the measures decided on short selling by the competent authorities. A consultation document on the pan-European short selling disclosure regime was published on 8 July 2009.

CESR’s response, prepared by CESR-Pol, to the European Commission’s call for evidence on the review of the Market Abuse Directive was submitted to the European Commission and published on 10 July 2009.

The permanent work group Surveillance and Intelligence Group (S & I Group), set up in 2005, allowed to exchange practical experience in cooperation, daily supervision of investment firms and financial markets and unauthorised offers of financial services by persons or investment firms that have not been granted adequate authorisation.

CESR-Pol has also continued to establish Urgent Issues Groups every time several authorities of different Member States are involved in an investigation and it became necessary to ensure swift cooperation and to take prompt measures in cases of threats to one or several securities markets.

Furthermore, CESR-Pol continued to develop its network for the dissemination of warnings relating to illicit offers of financial services by investment firms or individuals that have not been granted the required authorisations.

CESR-Pol has also continued to enhance its dialogue with the International Organisation of Securities Commissions (IOSCO) in order to improve cooperation and exchange of information with non-cooperative countries and to coordinate the measures to be taken in this respect.

All the documents are available on CESR’s website (www.cesr.eu).

2.2.3. Groups established within CESR

• CESR MiFID Level 3 Expert Group

In order to ensure an efficient and equivalent implementation and application and to develop a consistent interpretation of the provisions of the framework directive and its executive measures according to the Lamfalussy procedure, the expert group is tasked with dealing with a series of technical and operational issues of Levels 1 and 2 of the MiFID.

The expert group is assisted by two working groups for the preparation of guidelines, namely the Intermediaries group and the Markets group.

The Intermediaries group produced the following documents:
- Feedback statement - MiFID complex and non-complex financial instruments for the purposes of the Directive’s appropriateness requirements (CESR/09-558);
- Questions and Answers - MiFID complex and non complex financial instruments for the purposes of the Directive’s appropriateness requirements (CESR/09-559);
- Consultation paper on Inducements: Good and poor practices (CESR/09-958);
- Protocol on the supervision of branches under MiFID (CESR/07-672).

The Markets group produced the following documents:
- finalisation of the report relating to the impact of MiFID on secondary markets for non-equity securities;
- submission, on 10 July 2009, to the European Commission of the Report on transparency of corporate bond, structured finance product and credit derivatives markets, recommending the introduction of a mandatory transparency regime;
- update of the protocol on the operation of the database that includes information on shares admitted to trading on a regulated market of the EU, as well as the lists of systematic internalisers, regulated markets, multilateral trading facilities (MTF) and central counterparties.

As concerns the exemption from pre-trade transparency requirements, all suggested systems or facilities are submitted for assessment by the Markets group, at the initiative of the respective Member State, in order to ensure an appropriate level of transparency of markets and a convergence of supervision across the EU.

All the documents and case studies undertaken by the group are available on CESR’s website (www.cesr.eu).

• CESR Expert Group on Investment Management

In 2009, the expert group worked in particular on the following topics:
- passport for UCITS management companies and their organisational requirements;
- master/feeder UCITS structures, mergers of UCITS and UCITS notifications;
- procedures on risk management and measurement;
- changes to the regime applying to simplified prospectuses (Key Information Document);
- depositaries of UCITS, and
- operational prudential supervision (Operational Task Force).

Six working groups, which met overall 29 times during 2009, studied these subjects in particular.

The expert group is assisted by a consultative group consisting of 16 industry experts, including one representative of the Luxembourg investment fund sector. In 2009, one meeting was held between the expert group and the consultative group.

In 2009, CESR published the following documents:
- Technical advice to the European Commission on the UCITS management company passport (CESR/09-963): the advice advocates the largest possible alignment with the rules of the MiFID Directive. UCITS management companies shall apply the principles of the MiFID Directive while taking into account the specificities relating to UCITS. A management company shall therefore apply, where appropriate, the rules of the MiFID Directive as regards best execution, inducements and direct sale, including the appropriateness test.
- Technical advice on the Key Information Document - KID (CESR/09-949): the advice lays down that the KID shall not be longer than two pages DIN A4 and shall include a synthetic risk indicator. The KID may contain three pages DIN A4 for structured UCITS which adopt performance scenarios.
- Technical advice relating to master-feeder UCITS structures, mergers of UCITS and the notification of UCITS (CESR/09-1186): the advice details in particular the information to be provided to investors in both the merging and the receiving UCITS in case of a merger as well as the matters which have to be covered in the contracts between the master UCITS and the feeder UCITS, their depositaries and their auditors.

- Response to the consultation of the European Commission on the duties and liabilities of UCITS depositaries (CESR/09-781): CESR supports more clarity in the applicable concept and rules in order to improve the legal safety and advocates enhanced harmonisation of the duties and liabilities of UCITS depositaries.

- Consultation document on the common definition of money market funds (CESR/09-850): CESR proposes an approach which would include certain criteria to be fulfilled in order to be able to use the denomination of short term money market fund and longer term money market fund. Such criteria would apply both to UCITS covered by the UCITS Directive and to investment funds which do not fall under the directive. CESR intends to finalise guidelines in this context shortly.

**• CESR Expert Group on Transparency (Level 3)**

The expert group is tasked with Level 3 works under the Transparency Directive. The expert group thus discussed questions concerning the practical implementation of the Transparency Directive, the results of which were published in a “Frequently Asked Questions” document which is available on the CSSF website (www.cssf.lu/index.php?id=221).

In response to specific cases in which certain types of derivative instruments had been used with the intention to acquire control over a listed company while avoiding the notification of major holdings, the expert group reflected on the treatment of such instruments in the context of the notification of major holdings regime. This thought process led to a public consultation document (CESR/09-1215b) which was published on 9 February 2010.

The expert group also developed a call for evidence on the opportunity to adopt a unique format for the reporting of regulated information (periodic reports, etc.) In this context, XBRL was one of the most discussed formats. The expert group will have to look into the responses it receives from this exercise during 2010.

**• CESR Expert Group on Credit Rating Agencies**

While it could not await the publication of Regulation (EC) No 1060/2009 on credit rating agencies, the expert group started preparing the tasks arising from this Regulation from January 2009. As a matter of fact, Article 21 of the Regulation, which was eventually published in November 2009, tasks CESR with developing guidelines regarding the main elements of the new supervisory mechanism for credit rating agencies. A first draft of guidelines dealing in particular with the registration process, the functioning of the colleges of the supervisory authorities, the mediation between authorities and Annex II of the Regulation was worked out and submitted to public consultation until 30 November 2009.

The expert group together with CESR-Tech also prepared the setting in place of a central repository for data relating to historical performance of credit rating agencies (Article 11 of Regulation (EC) No 1060/2009).

In order to practically implement Articles 4 and 5 of the Regulation, the expert group also contacted the authorities of a certain number of non-European countries in view of entering into cooperation agreements.

Following on from the launch of the second CESR report on the compliance of credit rating agencies with the IOSCO Code of conduct (CESR/08-277), the group published a report on compliance with the revised Code of conduct (CESR/09-417).
• CESR-Tech

CESR-Tech is CESR’s governance body as regards information technology and it ensures coordination and follow-up on the progress of pan-European projects. The group is made up of persons responsible for information technology within the supervisory authorities of the CESR Member States and met six times during 2009, among which once on the premises of the CSSF.

In 2007, the group launched the Transaction Reporting Exchange Mechanism (TREM), a network permitting the exchange of transaction reporting for financial assets according to the requirements laid down by the MiFID Directive. Transaction reporting constitutes a key element in the detection and analysis of market abuse. On average 1.1 billion reports are exchanged each year over the TREM network. In 2009, the CSSF contributed 7,167,024 declarations to this exchange.

In June 2009, CESR-Tech launched the Instrument Reference Data System (IRDS), a reference system which enables the management of the identification of 539,717 financial instruments which are admitted on the currently 84 regulated markets in Europe. This vast database is updated daily and determines which authority is competent for the receipt of the transaction reports exchanged via TREM. It is thereby ensured that the competent supervisory authority receives all the declarations which fall under its supervision, independently of where the transaction is executed.

In order to finalise its first IT project, the CESR Secretariat gave itself its own technical and software infrastructure, which allows to host not only TREM and IRDS but also other IT solutions which might prove necessary as a result of current and future EU legislation, especially in view of the new responsibilities which shall in 2011 be laid upon ESMA, the European Securities and Markets Authority.

Given the scale of the project and the current IT infrastructure of the CESR Secretariat, the project has been realised in close cooperation with the Member States and under the responsibility of a CSSF representative.

CESR-Tech has taken on two working groups, namely the Joint Group CEREP and the TREM User Group.

The Joint Group CEREP’s objective is to define the functionalities and requirements of the Central Repository (CEREP) which will form a central register grouping the data relating to historical performance of credit rating agencies. The system, which will be fed by the rating agencies, will allow the calculation of statistics per rating category by mid-2011. These results will be published on CESR’s website. An investor can then observe rating statistics of several rating agencies and compare results.

The TREM User Group, which is made up of final TREM and IRDS users, worked on the quality of declarations on transactions in financial instruments exchanged between CESR members via the TREM exchange mechanism according to Article 25 of the MiFID Directive. The group’s discussions covered the application of CESR guidelines on transaction reporting, the way in which to fill in the fields of the declaration, the valuation methods of the quality of the exchanged information and the implementation of controls within these reporting systems. The group also analysed the quality of the reference data which identifies the financial instruments admitted to trading and made available to CESR by the regulated markets in order to exchange reports.

• Joint CESR-European System of Central Banks (ESCB) working group on securities clearing and settlement systems

Following the ECOFIN decisions of June 2008, the group finalised its report published by CESR and the ESCB on 23 June 2009. This report contains in particular 19 recommendations relating to securities settlement systems and 15 recommendations relating to central counterparties.

The recommendations are addressed to supervisory authorities and central banks which will rely on them as a tool to achieve a coherent implementation of the recommendations and a level playing field for securities settlement systems and central counterparties within the EU.
• Prospectus contact group

In 2009, the contact group worked in particular on the re-examination of the Prospectus Directive for which the European Commission launched a consultation in January 2009. The discussions and comments were worked into a CESR response to the European Commission dated 24 March 2009 and published on 10 April 2009. The response took into account CESR’s comments and analysis in its draft directive which sets out to improve and simplify the Prospectus Directive which has been in force since July 2005.

The group also produced the following documents:

- statistics relating to approved prospectuses and passported into the different Member States between July 2006 and December 2008 and between January 2009 and June 2009,
- update of the list of national requirements concerning notifications (language, translation of the summary, etc.) on 26 February 2009, and
- common position on questions raised in the context of the implementation of the Prospectus Directive by updating the “FAQ CESR” three times, in February, September and December 2009. The updates dealt, inter alia, with (1) the clarification of the notion of public offer as regards publication of the price of securities on the secondary market, and (2) the fact that it is no longer possible to apply squeeze-out rights in supplements where the issue and delivery of the securities in question have closed.

All the documents are available on CESR’s website (www.cesr.eu).

• Takeover bids network

CESR organised two meetings in 2009 on the practical application of the Takeover Directive between representatives of the authorities responsible for takeover bids in the various Member States, whether or not they are CESR members. Within this European network made up of specialists in the matter, exchanges covered in particular concerted actions, exemptions from the mandatory takeover bid and possible adjustments of the offer price.

2.3. Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS)

The Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) comprises high level representatives from the insurance and occupational pensions supervisory authorities from EU Member States. The Committee’s objectives are to advise the European Commission, either at the European Commission’s request or on the Committee’s own initiative, as regards the preparation of implementing measures in the fields of insurance, reinsurance and occupational pensions, to contribute to the consistent implementation of EU directives and to the convergence of Member States’ supervisory practices and to constitute a forum for supervisory cooperation, including the exchange of information on supervised institutions.

In 2009, the Occupational Pensions Committee of CEIOPS followed-up on the observations and recommendations with regard to the reports published in 2008 and continued its fact-finding mission with respect to other topics. In November 2009, the Committee also published an update of the “CEIOPS Report on Market Developments” which provides an overview of the development in cross-border activity of institutions for occupational retirement provision (IORPs) in 2009.

CEIOPS also analysed practical aspects of different prudential approaches as regards the cross-border activity of IORPs. In parallel, the Committee worked on different national approaches on the ring-fencing of assets and commitments, including in stress situations. A report on the national requirements on risk management applicable to IORPs was also published.

CEIOPS reviewed the Budapest Protocol¹ which now includes a chapter on how to deal with cross-border customer complaints.

Work was undertaken to produce a report dealing with the implications of the additional requirements on information to be provided to members and beneficiaries which could be imposed by the host Member State on IORPs with cross-border activities.

It should also be noted that a group was set up to analyse in detail the future application of the provisions on Packaged Retail Investment Products (PRIPs) within pension schemes.

The report on the investigation into internal control mechanisms of IORPs which was launched during the third term of 2009 will be published at the end of 2010.

Another project consists in extracting the lessons to be learnt by the sector of occupational pension schemes from the financial crisis as regards the prudential approaches in place before the crisis. This project will include in particular the topic of investment rules both for defined benefits and defined contributions schemes.

Given the increasing importance of defined contributions schemes, a project concentrating exclusively on the defined contributions regimes will identify the risks taken by the members during the key periods of their life cycle. It is anticipated that a report is published at the end of 2010.

CEIOPS remains at the European Commission’s disposal regarding the initiatives it could set in place following the consultation and public hearing on 27 May 2009 on the harmonisation of solvency rules for IORPs.

An investigation will also be launched in order to analyse the existing link between various national prudential practices and different requirements on financial reporting.

The work undertaken by CEIOPS in 2009 on the various prudential approaches on cross-border activities of IORPs and on the national approaches regarding ring-fencing of assets of IORPs should be completed during 2010 by submitting two issues papers to the European Commission.

It should also be noted that CEIOPS publishes periodic press releases on the financial conditions and financial stability of the insurance and occupational pension fund sector in the EU (www.ceiops.eu)

2.4. Capital Requirements Directive Working Group (CRDWG)

This working group, which was set up by the European Commission in 2007 in order to discuss among Member States the amendments it wished to make to Directives 2006/48/EC and 2006/49/EC, took up its work again in 2009. The group first concentrated on matters such as remuneration policies of banks and trading books (subjects which are part of the draft CRD III Directive) as well as on national discretions contained in the CRD Directives.

The group then concentrated, inter alia, on regulated capital, liquidity, counterparty credit risk and dynamic provisioning, all aspects of the CRD Directives which should be more or less substantially amended in a future draft CRD IV Directive.

The aim of dynamic provisioning is to ensure that banks maintain adequate provisions at the right moment to cover all expected loss linked to credit risk, in a non pro-cyclical way. If the analysis of the accounting rules proposed by IASB for the reform of IAS 39 (expected cash flow) reveals a need for additional provisions in order to reach the above-mentioned aim, the drafting of an amendment to the CRD is planned for the end of March 2010.

2.5. Payment Services Directive Transposition Group

This working group is headed by the European Commission and includes representatives from the Member States in charge of transposing into national law Directive 2007/64/EC of 13 November 2007 on payment services in the internal market. It aims to support Member States during the implementation phase of said directive. The group is tasked with comparing approaches adopted by the Member States in order to identify any discrepancies at an early stage and to provide a clear and detailed interpretation of the provisions of the directive.
2.6. Committee on the prevention of money laundering and terrorist financing

Additional explanations on the works performed in 2009 by the Committee are given in Chapter XIII “Fight against money laundering and terrorist financing”.

2.7. Anti-Money Laundering Task Force (AMLTIF)

Additional explanations on the works performed in 2009 by the working group are given in Chapter XIII “Fight against money laundering and terrorist financing”.

2.8. Accounting Regulatory Committee / Contact Committee on Accounting Directives

The objective of the Accounting Regulatory Committee, established by the European Commission in accordance with Article 6 of the IAS Regulation, is to provide advice on the proposals of the European Commission in order to adopt one or several international accounting standards IAS/IFRS of the IASB.

In 2009, the committee met five times, jointly with the Contact Committee on Accounting Directives, instituted under Article 52 of the fourth Company Law Directive (78/660/EEC). These meetings mainly addressed the adoption of the IASB standards, the draft IASB standards in progress and IASB governance. The committee’s work can be followed on the European Commission’s website (http://ec.europa.eu/internal_market/accounting/committees/arc_meetings_en.htm).

The current situation of the approval process of the international accounting standards in the EU is also available on the website of the European Commission (http://ec.europa.eu/internal_market/accounting/legal_framework/regulations_adopting_ias_text_en.htm).

2.9. European Group of Auditors’ Oversight Bodies (EGAOB)

The European Group of Auditors’ Oversight Bodies (EGAOB) was established by Decision 2005/909/EC of 14 December 2005 of the European Commission. The expert group advises the European Commission on any issue relating to the preparation of measures implementing Directive 2006/43/EC. It also provides technical support for the setting-up of comitology measures, in particular with respect to issues relating to the assessment and approval of international audit standards in view of their adoption at Community level and the assessment of third-country public oversight systems. In addition, the group is also an exchange platform for representatives of the audit profession and supervisory authorities of third countries.

The expert group has set up working subgroups the main activities of which are set forth below.

2.9.1. EGAOB - Sub-Group on Cooperation on Third Countries

The objective of this subgroup is to facilitate cooperation between public auditors’ oversight bodies at Community level and third-country regulators.

In 2009, the subgroup continued analysing the equivalence of public oversight systems for third-country auditors of companies established outside the EU and whose securities are admitted to trading on European regulated markets. This exercise was conducted pursuant to Article 46 of Directive 2006/43/EC which provides, under certain conditions, the option to exempt third-country auditors from public oversight on the basis of reciprocity.

The Decision 2008/627/EC of the European Commission of 29 July 2008 granted a transition period to 34 third countries. This decision allows audit firms from these countries to pursue their audit activity and to delay their registration until 1 July 2010, in accordance with the transition period.
2.9.2. EGAOB - Sub-Group Intra EU members

The objective of this subgroup is to facilitate the exchange of information between public auditors’ oversight bodies at Community level.

In 2009, the subgroup largely developed a best practice guide on the modalities for exchange of information between public supervisory authorities in Member States by distinguishing between requests for inspection and those for investigation.

2.9.3. EGAOB - Sub-Group on International Standards on Auditing

As Directive 2006/43/EC requires the application of international audit standards within the scope of statutory audit, this subgroup analyses the international audit standards and the developments in this field, with a view to their adoption at Community level.

The international audit standards are currently being translated into the different languages of the European Community. Only after this process is complete will the European Commission be in a position to adopt them.

2.9.4. EGAOB - Sub-Group on Inspections

The subgroup’s mission is to allow public supervisory authorities of the Member States to confer on the best practices regarding quality assurance.

In 2009, the subgroup allowed to take stock of the common problems which supervisory authorities are faced with and initiated the development of means to remedy these situations. These works at a European level also aim to finalise a harmonised approach by the supervisory authorities of the different Member States as regards inspections.

2.10. Banking Supervision Committee

The Banking Supervision Committee of the European Central Bank is a committee comprising high level representatives of the banking supervisory authorities and the central banks of Member States. The Committee is chaired by Mr Peter Praet, Executive Director of the National Bank of Belgium since June 2007. The missions concerning prudential supervision conferred by the Treaty and the statutes of the European Central Bank on the ESCB (European System of Central Banks) are carried out by the Banking Supervision Committee on behalf of the ESCB.

Two working groups comprising members of the central banks and national supervisory authorities, i.e. the Working Group on Macro-Prudential Analysis and the Working Group on Developments in Banking, mainly assisted the Banking Supervision Committee in carrying out its mandate in 2009.

In order to systematise the analysis of macro-economic data with a view to identifying, as far as possible in time, the factors likely to weaken the financial institutions as a whole and thereby the financial system, the Working Group on Macro-Prudential Analysis monitors the macro-economic environment and reports to the Committee on trends and facts likely to be relevant to the prudential supervision of the financial sector. These works result in a recurring contribution to reports on financial sector stability which are published twice a year.

The aim of the Working Group on Developments in Banking is to identify and follow-up on structural developments which shape the European banking sector. This follow-up results in the yearly publication of a report entitled “EU Banking Structures”. 
3. Multilateral Cooperation

3.1. Basel Committee on banking supervision

In 2009, the Basel Committee continued working on improving and strengthening the rules on capital adequacy (mainly as regards trading book and securitisation), liquidity management, internal risk management and transparency. This work is part of a broader effort the Basel Committee has undertaken to strengthen the regulation and supervision of banks in light of weaknesses revealed by the financial markets crisis.

The Basel Committee thus published the final version of the following documents: “Guidelines for computing capital for incremental risk in the Trading Book”, “Revisions to the Basel II Market Risk Framework”, “Enhancements to the Basel II Framework” (July 2009) and “Principles for sound stress testing practices and supervision” (May 2009).

The proposed amendments relate in particular to trading book positions and exposures in the context of securitisations. The Basel Committee aims to complete the rules relating to the calculation of the minimum capital requirements for trading book market risk as regards complex and illiquid products and to add a specific risk weighting which is far higher for “resecuritised” products.

The Committee further suggests to reinforce the supervisory review process, in particular as regards integrated risk management and stress testing. It also proposed new rules relating to information on exposures to be notified in the context of a securitisation.

Still in this context, the Basel Committee published consultation documents on the proposals to strengthen the resilience of the banking sector and liquidity management. These proposals cover the following issues:

- Capital base: the Basel Committee intends to raise the quality, consistency and transparency of the capital base in order to ensure that the banking system is in a better position to absorb losses both on a going concern and a gone concern basis.

- Capital requirements for Pillar 1: the Basel Committee seeks to improve the measures of counter-party credit risk on derivatives, “repos” and securities financing activities.

- Leverage ratio: the Basel Committee wants to introduce a leverage ratio as supplementary measure to the solvency ratio in the current framework. This ratio will help contain the build-up of excessive leverage in the banking system, and introduce additional safeguards against model risk and risk measurement errors.

- Capital buffers: the Basel Committee wishes to introduce a series of measures to promote the build-up of capital buffers in good times that can be drawn upon in periods of stress. Moreover, the Committee is promoting more forward-looking provisioning based on expected losses, which captures actual losses more transparently and is also less pro-cyclical than the current provisioning model.

- Liquidity ratio: the Basel Committee proposes a short-term liquidity ratio (Liquidity Coverage Ratio) which requires a 30-day liquidity coverage and is completed by a longer-term structural ratio (Net Stable Funding Ratio).

Among the other publications by the Basel Committee, it is useful to point out the “Report and Recommendations of the Cross-Border Bank Resolution Group” (September 2009). This report was prepared by the Cross-Border Bank Resolution Group (CBRG) and highlights the limits of national crisis management mechanisms in the event of restructuring or insolvency of international financial institutions and outlines possible improvements to these mechanisms. The CBRG’s recommendations intend in particular to strengthen the national authorities’ powers of intervention as well as cooperation between authorities in order to allow for a more efficient solution to a crisis affecting international financial institutions.

All of the publications of the Basel Committee are available on its website (www.bis.org).
The Basel Committee counts four permanent sub-committees, namely the Standards Implementation Group, the Policy Development Group, the Accounting Task Force and the Basel Consultative Group (in which the CSSF is not represented) as well as ad hoc groups.

3.1.1. Standards Implementation Group (SIG)

This group’s aim is to promote the coherent application of different standards and guidelines issued by the Basel Committee. It succeeds the Accord Implementation Group (AIG) and takes over the latter’s mission in implementation of the Basel II Accord. In 2009, this group worked on best practices for Pillar 2, colleges of supervisors and remuneration.

3.1.2. Policy Development Group (PDG)

While the CSSF is not represented in the PDG itself, it is represented in the following sub-working groups of the PDG:

- **Risk Management and Modelling Group (RMMG)**

  The RMMG, tasked with specific risk management matters, dedicated the year 2009 to the review of regulatory own funds requirements needed to cover counter-party risk in the light of the lessons learnt from the crisis.

- **Working Group on Liquidity**

  The works of this group, published in December 2009, mainly dealt with the drafting of proposals for consultation as regards the liquidity ratio.

- **Definition of Capital Subgroup**

  Against the backdrop of the financial crisis on credit institutions’ own funds, this subgroup was tasked with reflecting on the future structure of regulatory capital. While concentrating first on original own funds and hybrid capital instruments, the group’s work took concrete shape over the course of the year 2009 and now includes all the elements of the definition for regulatory capital. The group’s suggestions are likely to have a material impact on the nature of own capital held by banks. These suggestions constitute one of the key elements of the consultation document entitled “Strengthening the resilience of the banking sector” published by the Basel Committee in December 2009.

- **Capital Monitoring Group (CMG)**

  In 2009, the CMG, whose mission it is to analyse the impact of the transition from Basel I to Basel II rules on regulatory capital, as well as on the capital requirements for credit institutions, undertook two empirical studies on the impact of the Basel II regulations on the components of the prudential ratios.

- **Quantitative Impact Study Working Group (WG QIS)**

  In 2009, the WG QIS was tasked with conducting a general impact study during the first quarter of 2010 to assess the effects of the new measures proposed by the Basel Committee to strengthen the financial stability of credit institutions. The group therefore set out reporting tables for the banks in question and decided on the technical means needed to conduct the survey.

- **Cross-Border Bank Resolution Group (CBRG)**

  The group’s work mainly centred on drafting the document entitled “Report and Recommendations of the Cross-Border Bank Resolution Group” which was published in September 2009.

3.1.3. Accounting Task Force (ATF)

In the field of international accounting standards, the Accounting Task Force addressed several comment letters to the IASB on the IASB project, including in particular the measures proposed by the IASB in the context of the financial crisis. The ATF has also undertaken surveys with banks on the potential impact of a new standard “IFRS 9 Financial Instruments” or on the adoption of fair value, the impact of own credit risk and reclassifications.
The ATF also published the “Guiding principles for the replacement of IAS 39” in August 2009 which were submitted to the IASB in July 2009 and which are a response to the G20 leaders’ recommendations in April 2009 to strengthen supervision and financial regulation. The G20 leaders called for accounting standard setters to work urgently with supervisors and regulators to improve standards on valuation and provisioning and achieve a single set of high-quality global accounting standards. The Basel Committee is of the opinion that these principles ought to ease the coordination between standard setters, prudential supervisory authorities and regulators in their respective efforts to implement the G20 recommendations.

As regards the document “Supervisory guidance for assessing banks’ financial instrument fair value practices”, published in April 2009, it should be mentioned that it proposes principles addressed to banks and prudential supervisory authorities in order to reinforce the valuation process of financial instruments.

As regards audit, the ATF continued its work with respect to international accounting standards and prepared comment letters on consultation documents for the International Auditing and Assurance Standards Board (IAASB).

3.1.4. Corporate Governance Task Force

The group updated the guidelines on corporate governance for banking organisations published on 13 February 2006 with the title “Enhancing Corporate Governance for Banking Organisations”.

The prudential lessons learnt from the practical cases of recent deficiencies observed in the field of corporate governance helped identify five key areas in which the current text will be completed. Firstly, this concerns the appointment, the composition, the working and responsibilities of the board of directors. Secondly, the principles relating to the components of remuneration shall be substantially touched up. The positioning and missions of the risk management function will also be clarified. The principle of transparency will be further developed. Finally, the know your structure/know your business theme shall be dealt with more specifically to extract best practice principles as regards the use and implementation, for own account or on behalf of third parties, of complex legal and funding structures.

Representatives of the OECD, as well as of the World Bank participated in these works. Discussions and dialogue took place with other international organisations, namely with representatives of the International Association of Insurance Supervisors (IAIS). It is foreseen to submit a revised version to public consultation during spring 2010.

3.2. International Organisation of Securities Commissions (IOSCO)

3.2.1. 34th IOSCO Annual Conference

The securities and futures regulators as well as other members of the international financial community met in Tel Aviv (Israel), from 8 to 11 June 2009, on the occasion of the 34th Annual Conference of IOSCO.

IOSCO is currently concerned with the following topics:

- Objectives and principles of IOSCO’s financial regulation

The objectives and principles of the financial regulation of securities (the IOSCO principles), ratified by IOSCO in 1998, aim to encourage countries to improve the quality of their regulation and prudential supervision. They represent the principal international benchmark on prudential supervision of securities markets.
In 2005, IOSCO created the Principles Assessment and Implementation Program in order to help jurisdictions implement these principles.

The G20 process reinforced the accent on the role of the standards defined by the IOSCO principles and the importance laid upon their implementation.

IOSCO introduced its proposals to the World Bank and the International Monetary Fund which are aimed at strengthening the Financial Sector Assessment Program (FSAP) by means of coordination with the IOSCO Assessment Program in order to assess the regulatory systems in the different countries at expert and high-quality level.

It was decided to set up a Task Force to review and, if appropriate, revise the IOSCO principles with a view to adopt the revised principles at the 35th Annual Conference.

• IOSCO’s Multilateral Memorandum on cooperation

As regards the Multilateral Memorandum of Understanding, IOSCO set itself the ambitious target of making all its members which are supervisory authorities sign up before 2010. As at 1 January 2010, 64 members had signed the MMOU and 46 members had committed to signing it, in compliance with Appendix B of the Memorandum. Only five members have still not signed up, be it as signatories to the Memorandum itself or to Appendix B.

• Working group on cooperation in supervisory matters

IOSCO has set up a working group which is tasked with defining the principles for cooperation as regards supervision, by taking a similar approach to that adopted in the 1990s to define principles of cooperation in the application of regulation.

Finally, it ought to be noted that the supervisory authority of the Cayman Islands (the Cayman Islands Monetary Authority) was accepted as ordinary IOSCO member and that three organisations as well as the European Commission were accepted as affiliate members.

3.2.2. IOSCO groups

The CSSF is a member of two IOSCO groups, i.e. the Standing Committee n°1, dealing, among others, with subjects concerning accounting, and the Standing Committee n°5 concerning UCIs and collective management.

• Standing Committee n° 1 (SC1)

As member of the permanent committee SC1, the CSSF attends the meetings of the SC1 and, as far as possible, those of the subcommittees on disclosure, accounting, auditing, as well as the implementation of IAS/IFRS.

The most prominent topic during 2009 was the crisis on financial markets. In this context, the SC1 participated in IASB’s round tables on the improvement of the definitions and the coherence of information to be provided. In its report on the subprime crisis, the Technical Committee furthermore instructed the SC1 to assess in how far the existing internal controls, documentation procedures and necessary diligence regarding the ownership rights attached to the underlying assets of the publicly traded covered products protect investors’ interests in these products.

The SC1 members therefore conducted a survey on the necessary diligence and internal control procedures laid down in the various member jurisdictions to ensure a “true sale” of the assets to the trust.

On 18 June 2009, at its annual conference, IOSCO published a press release on the IAASB’s Clarity project and on the International Standards on Auditing (ISA).

The SC1’s subcommittees’ works are briefly set out below.

Disclosure Subcommittee

The final project on the disclosure principles on public offerings of ABS, such as requested in IOSCO’s subprime report which was discussed throughout the year, was finalised for submission to the Technical Committee.

2 Multilateral Memorandum of Understanding (MMoU) concerning consultation and cooperation and the exchange of information.
The project on the principles of periodic information to be published by issuers, including in particular a section on remuneration, will also be submitted to the Technical Committee.

The Committee will prepare the notes for two future possible projects, one relating to executives’ remuneration and the other to periodic or continuous information for ABS or for complex instruments.

**Auditing**

The Audit Subcommittee (AuSC) continued to follow up on the development of the standards on auditing and the independence of the IAASB, the international regulator for standards on auditing.

The ISAs, clarified thanks to the IAASB Clarity project, finalised in December 2008 and approved by the PIOB (Public Interest Oversight Board) in February 2009 shall apply to the audit of financial statements for the periods starting from 15 December 2009.

The SC1 is currently reviewing the consultation documents which deal with the audit of complex financial instruments and the insurance on greenhouse effect issues.

The IAASB also intends to amend the standard ISA 610 on the use of the internal auditor’s work by the external auditor.

There have also been discussions on the current work by IESBA (International Ethics Standards Board for Accountants) on its survey/paper entitled “IFAC Ethics Code - Clarity Redrafting”.

**Accounting**

The Accounting Subcommittee (ASC) continued to follow the activities of the IASB closely and takes part in various working and consultative groups such as IFRIC, SAC, Financial Instruments Working Group, Insurance Working Group, Joint International Group on Performance Reporting, Extractive Industries, Lease Accounting, Employee Benefits and the XBRL Advisory Council.

The subcommittee analysed and sent comment letters on several papers, surveys and discussion papers.

It also commented on IFRIC’s interpretations and decisions as well as on amendments to existing standards proposed by the IASB.

• **Standing Committee n°5 (SC5)**

The CSSF is a member of the permanent committee SC5 Investment Management which dealt with the following topics in 2009: Exchange Traded Funds, Fund of Hedge Funds Related Issues Based on Best Market Practices, Good Practices in relation to Investment Managers’ Due Diligence when investing in Structured Finance Instruments, Principles on Point of Sale Disclosure, Principles for the Valuation of CIS Portfolios, Private Equity Conflicts of Interest, Protection and Segregation of CIS Portfolios and Suspensions of Funds’ Subscriptions/Redemptions.

IOSCO published the following documents in 2009:

- the reports “Hedge Funds Oversight” and “Regulation of Short Selling” in June 2009;
- the final report “Good Practices in Relation to Investment Managers’ Due Diligence When Investing in Structured Finance Instruments” in July 2009;

The documents are available on the IOSCO’s website (www.iosco.org) under the heading IOSCO Library, Policy Documents, Public Documents.

**3.3. Financial Action Task Force (FATF) against money laundering and terrorist financing**

Additional explanations on the works performed in 2009 by FATF are given in Chapter XIII “Fight against money laundering and terrorist financing”.

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3.4. AML/CFT Expert Group

Additional explanations on the works performed in 2009 by the expert group are given in Chapter XIII “Fight against money laundering and terrorist financing”.

3.5. Extended contact group “Undertakings for collective investment”

The CSSF participated in the annual meeting of the group, which was held from 16 to 18 September 2009 in the Isle of Man. The following matters were discussed: questions relating to prudential supervision, conflicts of interest/code of conduct, legal issues, financial issues, reporting and disclosure, management and administration of investment funds, UCITS and special investment funds.

3.6. Institut francophone de la régulation financière (IFREFI)

The Institut francophone de la régulation financière (IFREFI, Francophone institute for financial regulation), gathering the financial markets regulatory authorities of 16 French-speaking countries, is a flexible structure of cooperation and dialogue. IFREFI also aims at promoting professional training by organising training seminars on specific topics.

The annual meeting of IFREFI Chairmen, which took place in Cotonou (Benin) on 18 May 2009, dealt in particular with the regulatory developments in the different jurisdictions, the lessons to be learnt from the financial crisis and financial communication by listed companies in times of crisis. The meeting was followed by a seminar.
CSSF's heads of department
Left to right: Sonny BISDORFF-LETSCH, Jean-Marc GOY, Françoise KAUTHEN, Marc LIMPACH, Christiane CAMPILL, David HAGEN, Danielle MANDER, Marc WEITZEL, Geneviève PESCATORE, Alain OESTREICHER, Marie-Anne VOLTAIRE, Frank BISDORFF, Jean-François HEIN, Danièle BERNA-OST, Romain STROCK, Irmine GREISCHER, Frédéric TABAK
Absent: Carlo FELICETTI