

**CEIOPS' Advice for
Level 2 Implementing Measures on Solvency II:**

Cooperation and Colleges of supervisors

(former CP 62)

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1. Introduction

- 1.1. In its letter of 19 July 2007, the European Commission requested CEIOPS to provide final, fully consulted advice on Level 2 implementing measures by October 2009 and recommended CEIOPS to develop Level 3 guidance on certain areas to foster supervisory convergence. On 12 June 2009 the European Commission sent a letter with further guidance regarding the Solvency II project, including the list of implementing measures and timetable until implementation.
- 1.2. This advice aims at providing advice for Level 2 measures with regard to the coordination of group supervision along with supporting material that could be used to develop Level 3 guidance. The Solvency II Level 1¹ text (herein "Level 1 text") calls for implementing measures on the coordination of group supervision in Articles 248 (7) and 249 (3).
- 1.3. Although the provisions of the Sienna Protocol are not explicitly addressed in the Level 1 text, CEIOPS considers that the European Commission may consider their inclusion in Level 2 implementing measures.
- 1.4. The proposal of regulation of ESAs² modifying the financial supervisory architecture could influence the decision-making process included in the present Level 1 text, in particular proposals on binding mediation.

2. Extract from Level 1 text

- 2.1. The Level 1 text sets out in Article 249 principles requiring cooperation and exchange of information between supervisory authorities.

"1. The authorities responsible for the supervision of the individual insurance and reinsurance undertakings in a group and the group supervisor shall cooperate closely, in particular in cases where an insurance or reinsurance undertaking encounters financial difficulties.

With the objective of ensuring that the supervisory authorities, including the group supervisor, have the same amount of relevant information available to them, without prejudice to their respective responsibilities, and whether or not established in the same Member State, they shall provide one another with such information in order to allow and facilitate the exercise of the supervisory tasks of the other authorities under this Directive.

In this regard, the supervisory authorities concerned and the group supervisor shall communicate without delay to one another all relevant information as soon as it becomes available. The information referred to in this subparagraph includes, but is not limited to, information about actions of the group and supervisors, and information provided by the group.

¹ Latest version from 19 October 2009 available at <http://register.consilium.europa.eu/pdf/en/09/st03/st03643-re01.en09.pdf>

² http://ec.europa.eu/internal_market/finances/committees/index_en.htm

1a. The authorities responsible for the supervision of the individual insurance and reinsurance undertakings in a group and the group supervisor shall each call immediately for a meeting of all supervisors involved in group supervision in at least the following cases:

(a) when they become aware of a significant breach of the Solvency Capital

Requirement or a breach of the Minimum Capital Requirement of an individual insurance or reinsurance undertaking; or

(b) when they become aware of a significant breach of the Solvency Capital

Requirement at group level calculated on the basis of consolidated data or the aggregated group Solvency Capital Requirement, in accordance with which method according to Title III, Chapter II, Section 1, Subsection 4, is used;

(c) when other exceptional circumstances occur or have occurred.

2. The Commission shall adopt implementing measures determining the items which are, on a systematic basis, to be gathered by the group supervisor and disseminated to other supervisory authorities concerned or to be transmitted to the group supervisor by the other supervisory authorities concerned.

The Commission shall adopt implementing measures specifying the items essential or relevant for supervision at group level with a view to enhancing convergence of supervisory reporting.

The measures referred to in the first and second subparagraphs designed to amend nonessential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3)."

2.2. The recital further reinforces the importance of establishing an appropriate exchange of information and a close cooperation between the group supervisor and the authorities for the supervision of individual undertakings in order to meet supervisory challenges and objectives.

2.3. *107 All supervisors involved in group supervision should be able to understand the decisions made, in particular when those decisions are made by the group supervisor. When it becomes available to one of the supervisors, the relevant information should therefore as soon as it becomes available be shared with the other supervisors, in order for all supervisors to be able to establish an opinion based on the same relevant information. In the event that the supervisors concerned cannot reach an agreement, qualified advice from CEIOPS should be sought to resolve the situation."* Moreover article 253 on Professional secrecy and confidentiality states that:

"Member States shall authorise the exchange of the information between their supervisory authorities and between their supervisory authorities and other authorities, as referred to in Articles 249 to 252.

Information received in the framework of group supervision, and in particular any exchange of information between supervisory authorities and between supervisory authorities and other authorities which is provided for in this Title, shall be subject to the provisions on professional secrecy and communication of confidential information laid down in Article 295.”

- 2.4. Additionally, the General approach on the Level 1 text introduces on article 248 provisions on the College of Supervisors.

“1. The rights and duties assigned to the group supervisor with regard to group supervision shall comprise the following:

(a) coordination of the gathering and dissemination of relevant or essential information for going concern and emergency situations, including the dissemination of information which is of importance for the supervisory task of a supervisory authority;

(b) supervisory review and assessment of the financial situation of the group;

(c) assessment of compliance of the group with the rules on solvency and of risk concentration and intra-group transactions as set out in Articles 218 to 245;

(d) assessment of the system of governance of the group, as set out in Article 246, and of whether the members of the administrative or management body of the participating undertaking meet the requirements set out in Article 42 and Article 257;

(e) planning and coordination, through regular meetings held at least annually or other appropriate means, of supervisory activities in going concern as well as in emergency situations, in cooperation with the supervisory authorities concerned and taking into account the nature, scale and complexity of the risks inherent in the business of all undertakings that are part of the group;

(f) other tasks, measures and decisions assigned to the group supervisor by this Directive or deriving from the application of this Directive, in particular leading the process for validation of any internal model at group level as set out in Articles 231 and 233 and leading the process for permitting the application of the regime established in articles 237 to 240.

2. In order to facilitate the exercise of the group supervision tasks referred to in paragraph 1, a college of supervisors, chaired by the group supervisor, shall be established.

The college of supervisors shall assure that cooperation, exchange of information and consultation processes among the supervisory authorities of the college, are effectively applied in accordance with Title III of this Directive, with a view to promoting the convergence of their respective decisions and activities.

3. The membership of the college shall include the group supervisor and supervisory authorities of all the Member States in which the head office of all subsidiary undertakings is situated.

The supervisory authorities of significant branches and related undertakings shall also be allowed to participate in the colleges of supervisors. However, their

participation shall only be limited to achieving the objective of efficient exchange of information.

The effective functioning of the college may require that some activities will be carried out by a reduced number of supervisory authorities within therein.

4. Without prejudice to any measure adopted pursuant to this Directive, the establishment and functioning of colleges shall be based on coordination arrangements concluded by the group supervisor and the other supervisory authorities concerned.

In the case of diverging views concerning the coordination arrangements, any member of the college may refer the matter to CEIOPS.

The group supervisor, following the consultation with the supervisory authorities concerned, shall duly consider any advice produced within two months by the CEIOPS before taking its final decision. The decision shall be set out in a document containing the fully reasoned decision and an explanation of any significant deviation from any advice given by CEIOPS. The group supervisor shall transmit the decision to the other supervisory authorities concerned.

5. Without prejudice to any measure adopted pursuant to this Directive, the coordination arrangements referred to in paragraph 4 shall specify the procedures for:

(a) the decision-making process among the supervisory authorities concerned as referred to in Articles 231, 232 and 247;

(b) consultation referred to in paragraph 4 and in Article 218(5).

Without prejudice to the rights and duties allocated by this directive to the group supervisor and to other supervisory authorities, the coordination arrangements may entrust additional tasks to the group supervisor or the other supervisory authorities in the cases where this results in a more efficient supervision of the group, and it does not impair the supervisory activities of the members of the college in respect of their individual responsibilities.

In addition, the coordination arrangements may set out procedures for:

(a) consultation among the supervisory authorities concerned, in particular as referred to in 213 to 217, 219 to 221, 227, 244 to 246, 250, 256, 260 and 262;

(b) cooperation with other supervisory authorities.

6. CEIOPS shall elaborate guidelines for the operational functioning of colleges on the basis of comprehensive reviews of the work of the colleges to assess the level of convergence between them. Such reviews shall be performed at least every three years. Member states shall ensure that the group supervisor transmit to CEIOPS the information, on the functioning of the college and any difficulties encountered, relevant for the reviews.

7. The Commission shall adopt implementing measures for the coordination of group supervision for the purposes of paragraphs 1 to 6, including the definition of a significant branch.

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

2.5. The recital further explains that objective as follows:

"(111) All insurance or reinsurance groups subject to group supervision should have a group supervisor appointed from among the supervisory authorities involved. The rights and duties of the group supervisor should comprise appropriate coordination and decision-making powers. The authorities involved in the supervision of insurance and reinsurance undertakings belonging to the same group should establish coordination arrangements."

"(113) Supervisors from all Member States in which undertakings of the group are established should be involved in group supervision through a college of supervisors. They should all have access to information available with other supervisory authorities within the college and they should be dynamically involved in decision-making. Cooperation between the authorities responsible for the supervision of insurance and reinsurance undertakings as well as between those authorities and the authorities responsible for the supervision of undertakings active in other financial sectors should be established."

"(114) The activities of the college shall be proportionate to the nature, scale and complexity of the risks inherent in the business of all undertakings that are part of the group and the crossborder dimension. The college of supervisors shall be set up to ensure that cooperation, exchange of information and consultation processes among the supervisory authorities of the college, are effectively applied in accordance with Title III of this Directive. Supervisory authorities shall use the college to promote convergence of their respective decisions and to cooperate closely to carry out their supervisory activities across the group under harmonised criteria."

"(115) This Directive provides a consultative role for CEIOPS. Advice by CEIOPS to the relevant supervisor is not binding on that supervisor when taking its decision. When taking a decision, the relevant supervisor should take full account of that advice and shall explain any significant deviation therefrom. It is advice that supervisors may not wish to ignore."

3. Advice

3.1. Considering articles 248 and 249, the following issues are identified in separate sub-sections in this advice:

a. Role of the College of Supervisors:

- Article 248 (1), lays out the rights and duties of the group supervisor. The Level 1 text grants no decision-making powers to the College of Supervisors. A College is a forum of exchange of information and cooperation that has no legal character and therefore can not itself take decision. Decision following discussion within the College is made by the relevant supervisory authority.
- Level 2 implementing measures in sub-section 3.1., the role of the College of Supervisors

b. Membership and participation in the College:

- Article 248 (3, 1st and 2nd paragraphs) states that membership to the College shall include the group supervisor and supervisory authorities of all the Member States in which the head offices of subsidiary undertakings are situated.
- The supervisory authorities of significant branches and related undertakings shall also be allowed to participate to the colleges of supervisors.
- Level 2 implementing measures in sub-section 3.2., the issue of the participation of supervisory authorities of significant branches and related undertakings with a focus on other financial sector supervisors and third country supervisors;

c. Organisation and establishment of Colleges:

- Article 248 ((3), 3rd paragraph) states that the effective functioning of the College may require that some activities will be carried out by a reduced number of supervisory authorities within the College.
- Level 2 implementing measures/ Level 3 guidance address, in sub-section 3.3., the issue of the organisation and effective functioning of the College, as well as an assessment of effectiveness on the functioning of Colleges and an advisable timetable for setting the Colleges. That setting will be based on the current Coordination Committees when appropriate.

d. Coordination arrangements:

- Article 248 (4 and 5) state that the establishment and functioning of Colleges shall be based on coordination arrangements determined by the group supervisor, following consultation with the supervisory authorities concerned.
- Level 2 implementing measures in sub-section 3.4., the issue of developing

a convergent framework;

e. Professional secrecy and confidentiality:

- Article 253 states on professional secrecy and confidentiality.
- Level 2 implementing measures.
- Nevertheless not explicitly foreseen within the implementing measures, the safe handling of confidential information was considered by CEIOPS has a relevant issue needed to be addressed within Level 2 implementing measures for cooperation and exchange of information between supervisory authorities.

f. Cooperation and information sharing in crisis situation:

- Article 249 (1) states that supervisory authorities shall cooperate closely, including in cases where an insurance or reinsurance undertaking encounters financial difficulties.
- Level 2 implementing measures in sub-section 3.6., how the supervisory authorities shall cooperate in this situation.

g. Possible issues for Level 3 guidance in 3.7

3.1. Role of the Colleges of supervisors

Explanatory text

- 3.2. The Level 1 text provides for the establishment of a College of Supervisors, aiming at facilitating group supervision.
- 3.3. The College of Supervisors shall be a permanent platform for cooperation and coordination dedicated to enhance the exchange of information among supervisory authorities involved. It will aim at facilitating exchange of information, views and assessments among supervisors in order to allow for a more efficient and effective group and solo supervision and timely action. The College of Supervisors will enable supervisors to develop a common understanding of the risk profile of the group as the starting point for a risk based supervision at both group and solo level.
- 3.4. The college shall then specially strive to:
- Be a platform for cooperation and coordination
 - Enhance the exchange of information
 - Facilitate group-wide supervision
 - Enhance solo supervision

- Facilitate convergence of supervisory practices

3.1.1. Platform for cooperation and coordination

- 3.5. The College does not have any decision-making powers under the Level 1 text, so the establishment of the College cannot prejudice any of the powers and responsibilities of the supervisory authorities. Annex 3 presents an analysis of the Level 1 text articles, in order to clarify the cases where the final decision is taken by the group supervisor or by the solo supervisor.
- 3.6. Nonetheless, CEIOPS believes that this does not prevent the process facilitated by the College from being based as much as possible on the consensual views reached by supervisory authorities within the College. The process of the College of Supervisors shall then strive to achieve consensus/joint decision by supervisory authorities.
- 3.7. On the issue of consensus/joint decision, the Level 1 text already provides specifically in some articles for the need to reach decision and consensus between supervisory authorities concerned. So, it is expected to be a decision-making process within the college in order to help that consensus/joint decision to be reached. Such process should be included in coordination arrangements (see 3.3), which could for example usefully provide for identifying positions of each authority within the College.

3.1.2. Enhance the exchange of information

- 3.8. Article 248 of the Level 1 text states that one of the duties of the group supervisor is the coordination of the gathering and dissemination of relevant or essential information.
- 3.9. The duty of coordination of the gathering and dissemination of relevant or essential information for going concern and crisis situations shall also consider the provisions on the exchange of information established in article 253 (cooperation and exchange of information between supervisory authorities).
- 3.10. According to article 249 (1) second paragraph, supervisory authorities “(...) *without prejudice to their respective responsibilities, and whether or not established in the same Member State, (...) shall provide one another with such information in order to allow and facilitate the exercise of the supervisory tasks of the other authorities under this Directive.*
- In this regard, the supervisory authorities concerned and the group supervisor shall communicate without delay to one another all relevant information as soon as it becomes available. The information referred to in this subparagraph includes, but is not limited to, information about actions of the group and supervisors, and information provided by the group.*
- 3.11. Besides, “*The authorities responsible for the supervision of the individual insurance and reinsurance undertakings in a group and the group supervisor shall each call immediately for a meeting of all supervisors involved in group supervision in at least the following cases:*

(a) when they become aware of a significant breach of the Solvency Capital Requirement or a breach of the Minimum Capital Requirement of an individual insurance or reinsurance undertaking; or
(b) when they become aware of a significant breach of the Solvency Capital Requirement at group level calculated on the basis of consolidated data or the aggregated group Solvency Capital Requirement, in accordance with which method according to Title III, Chapter II, Section 1, Subsection 4, is used;
(c) when other exceptional circumstances occur or have occurred.”

3.12. Also in Article 250 (1), “Without prejudice to Article 248, the supervisory authorities concerned shall, where a decision is of importance for the supervisory tasks of other supervisory authorities, prior to that decision, consult each other in the college of supervisors with regard to the following items:

(a) changes in the shareholder structure, organisational or management structure of insurance and reinsurance undertakings in a group, which require the approval or authorisation of supervisory authorities;

(b) major sanctions or exceptional measures taken by supervisory authorities, including the imposition of a capital add-on to the Solvency Capital Requirement under Article 37 and the imposition of any limitation on the use of an internal model for the calculation of the Solvency Capital Requirement under Title I, Chapter VI, Section 4, Subsection 3.

For the purposes of point (b), the group supervisor shall always be consulted.

In addition, the supervisory authorities concerned shall, where a decision is based on information received from other supervisory authorities, consult each other prior to that decision”

3.13. The Commission is seeking advice to adopt implementing measures determining the items which are, on a systematic basis, to be gathered by the group supervisor and disseminated to other supervisory authorities concerned or to be transmitted to the group supervisor by the other supervisory authorities concerned. The advice should also specify the items essential or relevant for supervision at group level with a view to enhancing convergence of supervisory reporting.

3.14. In the context of supplementary supervision under the Insurance Groups Directive (98/78/EC), CEIOPS has already published as an Annex to CEIOPS’ Statement on the Role of the Lead Supervisor, guidelines on information exchange between lead supervisors and other competent authorities which distinguishes between relevant and essential information and includes a table providing an illustrative list of essential information. CEIOPS believes that these guidelines are applicable for Colleges and intends to further develop them in forthcoming Level 3 guidance.

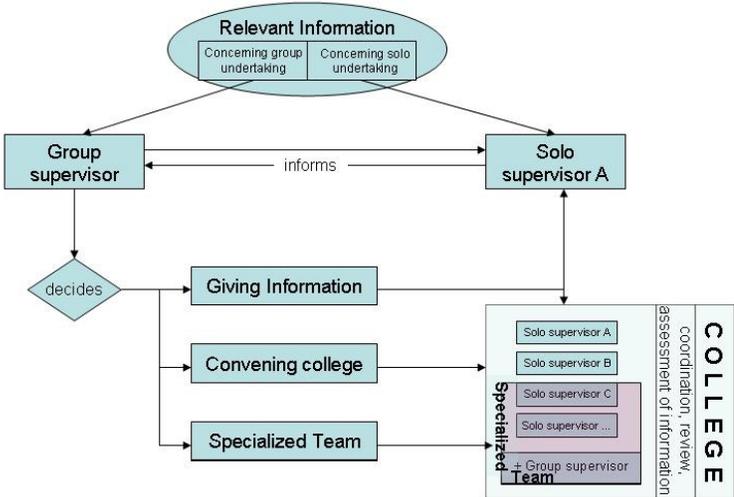
3.15. The CEIOPS guidelines notes that:

- “**Essential information**” which supervisory authorities shall *communicate* on their own initiative: information shall be regarded as essential if it could materially influence another supervisory authority assessment of the financial soundness of an insurance or reinsurance undertaking.

- **“Relevant information”** which they shall communicate on request: “Relevant *information*” is understood to mean information that is relevant to the performance of another supervisor’s obligations. Members of the College of Supervisors should agree on the scope of relevant information to be communicated, and may consider specifying the content, format, and the manner in which information will be exchanged (e.g. contacts, regular conference calls, regular meetings, written agreements etc). Supervisory authorities requesting information should state clearly the purpose for which the information is requested. This will help to assess its relevance.
- 3.16. The exchange of information could also be expected to cover the elements of information necessary for day-to-day supervision as well as the information material to the assessment of the financial soundness of the (re)insurance group, circulated upon the occurrence of pre-defined events. Information exchanged amongst supervisors will be a subset of the information available within the supervisory group and should be proportionate to the informational needs of the recipient.
 - 3.17. The group report to supervisors (RTS) (CEIOPS-CP-58/09) shall form the basis for the regular exchange of information.
 - 3.18. Besides the information foreseen in the RTS, CEIOPS considers that the following should also be considered essential or relevant information:
 - Difficulties that have potentially significant effects within the group, such as adverse developments, major sanctions and exceptional measures taken by competent authorities and other matters, to reflect the organisation of the group (centralised versus decentralised functions).
 - Significant changes in the way information is reported to different supervisors within a group and exchange of methodologies used to review that information;
 - 3.19. The College of Supervisors shall agree on how the information gathered will be exchanged between supervisors, in which form and how frequently. This could be agreed as part of the College coordination arrangements. It is important to avoid duplication of reporting as this can result in supervisory burden on undertakings within a group and information overload within supervisory authorities.
 - 3.20. In case of information sourced by the group, accordingly with CP 58, the frequency of the RTS differs between a “Full RTS” which has to be submitted annually for undertakings subject to annual detailed assessment as part of SRP and an “Annual RTS” that includes only material changes that have occurred in the business over the reporting period or a statement that no material changes have occurred. The RTS that is submitted each year, whether full or containing material changes should however contain all the information provided annually in the SFCR. Relating to the format, a common structure to be developed by CEIOPS is foreseen by the beginning of 2010. CEIOPS expects that especially the harmonised rules on frequency and format of the RTS should simplify exchange and processing of information in the College. The group supervisor shall, following the consultation with the other supervisory authorities, be responsible for the co-ordination of the gathering and dissemination of information in going

concern and crisis situations. On this issue it is relevant to underline article 30 of the Level 1 text under which supervisory authorities shall conduct their tasks in a transparent and accountable manner with due respect for the protection of confidential information.

- 3.21. The solo undertaking would be required to submit to the solo supervisor all information needed to discharge their duties in accordance with the Directive (i.e. for the solo supervisor to undertake the solo supervisory review process). The solo supervisor would feed their views on the solo undertaking's information and onwards it to the group supervisor which would then be shared within the reduced number of supervisory authorities (specialised team) that will carry out some activities or with all supervisory authorities which participate in the College. The group supervisor would also have the responsibility of disseminating the relevant group information on to the defined recipients for their consideration.
- 3.22. It is stressed that the established channels for the information flow, especially between group supervisor and group undertaking and solo supervisors and their respective solo undertakings should not be intercepted. CEIOPS sees the information closely linked to the methodology applied in the case of enforcement powers. The described process is outlined in the diagram below.



- 3.23. All the above essential and relevant information shall be gathered by the group supervisor and disseminated to the other supervisory authorities concerned and vice versa in a reasonable short time frame after having received the information.
- 3.24. CEIOPS considers that depending on the structure and circumstances of the group, relevant information may become essential for supervision at group level. Therefore, CEIOPS will leave the College to decide whether information is relevant or essential both in normal and crisis situations relying on a risk based

approach. The process to perform that risk assessment should form part of the College coordination arrangements. The College of Supervisors must also ensure that host supervisors (e.g. branch supervisors) not included in the College of Supervisors are kept informed about all essential and relevant information, including any decisions taken by the College of Supervisors.

- 3.25. CEIOPS is also aware of some cases where in the absence of subsidiaries no College is established. However, the relevance of branches may justify the establishment of some coordination arrangements similar to Colleges that should then be chaired by the home supervisor.

3.1.3. Facilitate group-wide supervision

- 3.26. The College of Supervisors shall assist the group supervisor in assessing the financial soundness and governance of the group. The college of supervisors should facilitate the exercise of the group supervisor's tasks in order to ensure efficient group supervision.
- 3.27. The group supervisor following the consultation with the other supervisory authorities, shall also produce an overview of the Group through a general top-down approach, supplemented with input from the other supervisors, of the system used at the level of the individual undertakings in terms of its:
- a. Formal and operational structure;
 - b. Business strategy;
 - c. Overall standard of the systems of governance of the group and an assessment of its adequacy for the risk profile of the group, including skills and propriety of management, main internal systems, internal controls, remuneration policies, the overall risk profile and the risk management of the group, auditing processes and the assessment of the group ORSA;
 - d. Risks concentration and intra-group transactions;
 - e. Financial resources including the assessment of the SCR at group level, liquidity management, the ability of the Group to raise additional capital and the distribution of capital within the Group.
- 3.28. The above referred overviews and findings should then be discussed within the College.
- 3.29. The College of Supervisors will discuss and co-ordinate any measures to be taken by the members of the College of Supervisors against any insurance undertaking being part of a group, both in regular and crisis situations, where appropriate.

3.1.4. Improve solo supervision

- 3.30. The College of Supervisors will improve solo supervision by enhancing the gathering and sharing of information. This will result in solo supervisors having greater knowledge of the group's strategies, intra-group transactions, risks, etc and therefore help them in performing their tasks.

- 3.31. The College of supervisors shall also coordinate supervisory actions especially in crisis situations in order to make them more effective.

3.1.5. Facilitate convergence of supervisory practices

- 3.32. Article 71 (2) states that *Member States shall ensure that in the exercise of their duties supervisory authorities have regard to the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations and administrative requirements adopted pursuant to this Directive.*
- 3.33. The College shall strive to assure consistent supervisory practices in the different jurisdictions.³

CEIOPS' advice

- 3.34. The College of Supervisors shall be a permanent platform for cooperation and coordination dedicated to enhance the exchange of information among supervisory authorities involved. It will aim at facilitating exchange of information, views and assessments among supervisors in order to allow for a more efficient and effective group and solo supervision and timely action. The College of Supervisors will enable supervisors to develop a common understanding of the risk profile of the group as the starting point for a risk based supervision at both group and solo levels.
- 3.35. College shall strive to:
- a. Be a platform for cooperation and coordination
 - The decision making process of the College of Supervisors shall strive to achieve consensus/joint decision.
 - b. Enhance the exchange of information
 - The group report to supervisors (RTS) shall form the basis for the regular exchange of information.
 - The College of Supervisors will agree on how and when information gathered will be exchanged between supervisors, and in which form.
 - CEIOPS considers that depending on the structure and circumstances of the group, relevant information may become essential for supervision at group level. Therefore, the College should decide whether information is relevant or essential both in normal and crisis situations relying on a risk based approach. The process to perform that risk assessment should be part of the College coordination arrangements.
 - c. Facilitate group-wide supervision
 - The College of Supervisors shall assist the group supervisor in assessing the financial soundness and governance of the group. The college of

³ This should include convergence with the FSB and IAIS principles.

supervisors should facilitate the exercise of the group supervisor's tasks in order to ensure that efficient group supervision

- The group supervisor following the consultation with the other supervisory authorities, shall also produce an overview of the Group through a general top-down approach, supplemented with input from the other supervisors, of the system used at the level of the individual undertakings in terms of its:
 - Formal and operational structure;
 - Business strategy;
 - Overall standard of the systems of governance of the group and an assessment of its adequacy for the risk profile of the group;
 - Risks concentration and intra-group transactions;
 - Financial resources including the assessment of the SCR at group level, liquidity management, the ability of the group to raise additional capital and the distribution of capital within the group.

d. Improve solo supervision

- College of Supervisors will improve solo supervision by enhancing gathering and sharing of information. This will result in solo supervisors having greater knowledge of the group's strategies, intra-group transactions and risks and therefore help them in performing their tasks.
- The College of supervisors shall also coordinate supervisory actions especially in crisis situations in order to make them more effective.

Facilitate convergence of supervisory practices

3.2. Membership and participation in the College

Explanatory text

- 3.36. According to Article 248(3) the membership of the college shall include the group supervisor and supervisory authorities of all the Member States in which the head offices of all subsidiary undertakings are situated. The supervisory authorities of significant branches and related undertakings shall be allowed to participate to the colleges of supervisors.
- 3.37. In its advice to the European Commission on aspects of the Framework Directive Proposal related to Insurance Groups (CEIOPS-DOC-25/08), CEIOPS advocated for the membership of all supervisors in the College, as a way to ensure that decisions taken are transparent and take into account the views and concerns of all supervisors. This is consistent with CEIOPS approach under Solvency I regime where all subsidiaries' supervisors are invited to the current Coordination Committees (Co-cos).
- 3.38. On this issue, the financial crisis showed that the whole group, directly or indirectly, may be affected and therefore coordination and exchange of information among supervisors is crucial.

3.39. CEIOPS considers that the provisions on exchange of information in the Sienna protocol remain relevant under Solvency II. Those provisions can be reflected in possible level 3 guidance.

3.2.1. Participation of supervisory authorities of significant EEA branches

3.40. According to the Level 1 text, the participation of significant branches shall only be limited to achieving the objective of efficient exchange of information.

3.41. The participation of branches' supervisory authorities in the Colleges meetings may be necessary in order to assure a permanent platform for cooperation and the coordination of appropriate supervisor actions. The participation of branch supervisors could be especially foreseen in College's meetings where issues specific to that branch are discussed or where their participation is relevant in terms of risks for the group or its relevance to Member States' markets.

3.42. The Level 1 text foresees that the Commission shall adopt implementing measures on the definition of a significant branch.

3.43. CEIOPS considers that a basic principle underpinning the development of any criteria of significance for the participation in the College of branches should include the significance of the entity within the group and/or in their local market.

3.44. CEIOPS also considers that there are two different approaches to the participation of any branch' supervisor in the College: the branch' supervisor asks on its own initiative to participate in the College, or, in the absence of this request, the group supervisor considers that its participation is relevant given the significance of the undertaking within the group.

3.45. Where a supervisor from a member state with a branch of the group presents a reasoned request to participate in the College, CEIOPS considers that the branch supervisor should be allowed to participate unless properly justified by the group supervisor following consultation with the other supervisory authorities within the College.⁴ Thus, the host supervisor participation in the college can be refused only when it can be properly justified that the branch is not significant within the group and in its local market. In the case of diverging views, the branch supervisory authority may refer the matter to the CEIOPS following the procedure foreseen in article 248 (4) of the Level 1 text.

3.46. On this issue, CEIOPS acknowledges that a quantitative threshold for assessing the significant of branches would facilitate a higher level of harmonisation, but, on the other hand, could prevent an adequate level of flexibility.

3.47. As a result, CEIOPS considers that the 'significance' of a branch should be based on the judgement of the group supervisor following the consultation with the other supervisory authorities within the College. This judgement should be supported on quantitative and qualitative criteria, for example:

⁴ Two members consider that consistency with CRD is needed.

- 5% threshold: if the market share exceeds 5% in the members state or if its gross written premium volume exceeds 5% of the gross written premium volume of the all group;
- Importance of the branch given the global risk profile of the group (e.g. where the potential contribution of the branch to the group SCR is above a material level);
- Supervisory authorities of newly entered branches in the groups bearing in mind how it will ultimately effect the group's overall financial or solvency position;
- Supervisors that bring insight into the specific nature of local governance cultures, that may have an impact both locally and/or the group as a whole.

3.2.2. Participation of supervisory authorities of related undertakings that are not subsidiaries

- 3.48. The Level 1 text article 248 (3) does not foresee the application of any significance criteria to the participation of the supervisory authorities of related undertakings (entities where there is significant but not a dominant influence). On the other hand, the level 1 text states the same limitation as the one applied on branches (i.e. limited to achieving the objective of efficient exchange of information).
- 3.49. As a result, CEIOPS considers that also the participation of these supervisors should be especially foreseen in the College's meetings where issues specific to that undertaking are discussed or where their participation is relevant in terms of risks for the group or in terms of relevance for the Member States' markets.

3.2.3. Participation of supervisory authorities of third countries

- 3.50. The Level 1 text does not refer to the participation of third country supervisory authorities.
- 3.51. However, CEIOPS acknowledges the importance that third countries insurance undertakings, including branches, can have on some groups and considers that their participation can be relevant in terms of understanding the risks of the group. The decision shall then be based on the judgement of the group supervisor following consultation with the other supervisory authorities in the College. Special attention shall be given to the equivalence of confidentiality requirements. On the equivalence issue, CEIOPS refers to Consultation Paper 60 on the Group Solvency assessment and to the specific consultation paper on equivalence that is being finalized. CEIOPS also underlines that according with the Level 1 text in case of equivalence of group supervision, roles and responsibilities could be assumed by the third country supervisor in equivalent quality and extension to those within the EEA."
- 3.52. The inability of supervisors to sign coordination arrangements may necessitate closed sessions.

3.2.4. Participation of competent authorities of other sectors

- 3.53. For the competent authorities of other financial sector entities (e.g. banking supervisors), CEIOPS believes that their participation should consider the risks for the group and should be up to the group supervisor, following the consultation with the other supervisory authorities within the College. This should take into account the appropriateness of inviting the competent authorities responsible for the sectoral group-wide supervision of for example the banking sector (e.g. consolidating supervisor) or the competent authorities of specific Member States where that sector is highly significant to the group.
- 3.54. In case of third country competent authorities, special attention shall be given to the equivalence of professional secrecy standards.
- 3.55. A summary of the composition of Colleges is illustrated below.

Composition of the College of supervisors	Business	Location of the head office or host country in case of branches	Participation
<i>Subsidiary undertaking</i>			
	Insurance	All Member States	Yes, because of Article 252(2a)
	Insurance	Third Countries	Yes, if so decided by the Group Supervisor having consulted the College
	Banking and other sectors	All Member States and Third Countries	Yes, if so decided by the Group Supervisor having consulted the College
<i>Branches</i>			
	Insurance	All Member States	Yes, if considered significant
	Insurance	Third Countries	Yes, if so decided by the Group Supervisor having consulted the College
<i>Related undertaking (not subsidiary)</i>			
	Insurance	All Member States	Yes, if so decided by the Group Supervisor having consulted the College
	Insurance	Third Countries	Yes, if so decided by the Group Supervisor having consulted the College
	Banking and other sectors	All Member States and Third Countries	Yes, if so decided by the Group Supervisor having consulted the College
<i>Other (e.g. participating undertaking)</i>			

Insurance	Third Countries	Yes, if so decided by the Group Supervisor having consulted the College
Banking and other sectors	All Member States and Third Countries	Yes, if so decided by the Group Supervisor having consulted the College

- 3.56. CEIOPS also acknowledges that there is a need to assure that the expansion of Colleges is appropriate. On this issue, the IAIS Guidance paper on the use of supervisory colleges in group wide supervision states that there is a need to balance the desire for an inclusive membership approach with the need to maintain manageable operational structures and to avoid the supervisory college becoming unwieldy and unworkable. Having that in mind, CEIOPS considers that supervisory authorities from significant branches, related undertakings other than subsidiaries, third countries and other sectors, where relevant in order to achieve the objective of the efficient exchange of information, may participate in the College in an appropriate way.

CEIOPS' advice

- 3.57. CEIOPS considers that the participation of supervisory authorities of significant branches, related undertakings, third countries and competent authorities of other financial sectors should be foreseen in the College meetings where issues specific to that undertaking are discussed or where their participation is relevant in terms of risks for the group or its systematic relevance to Member States' markets.
- 3.58. Where a supervisor from a member state with a branch of the group presents a reasoned request to participate in the College, CEIOPS considers that the branch supervisor should be allowed to participate unless properly justified by the group supervisor following consultation with the other supervisory authorities within the College. Thus, the host supervisor participation in the college can be refused only when it can be properly justified that the branch is not significant within the group and in its local market. In the case of diverging views, the branch supervisory authority may refer the matter to the CEIOPS following the procedure foreseen in article 248 (4) of the Level 1 text.
- 3.59. Where no such request has been made, the branch supervisor's participation should be based on the judgment of the group supervisor following the consultation with the other supervisory authorities within the College. This judgment should be supported on quantitative and/or qualitative criteria related to the significance of the entity within the group and/or in their local market, as for example:
- 5% threshold: if the market share exceeds 5% in the members state or if its gross written premium volume exceeds 5% of the gross written premium volume of the all group;
 - Importance of the branch given the global risk profile of the group (e.g. where the potential contribution of the branch to the group SCR is above a material

level);

- Supervisory authorities of newly entered branches in the groups bearing in mind how will ultimately effect the group's overall financial or solvency position;
 - Supervisors that bring insight into the specific nature of local governance cultures, that may have an impact both locally and/or the group as a whole.
- 3.60. Supervisory authorities from significant branches, related undertakings other than subsidiaries, third countries and other sectors, where relevant in order to achieve the objective of the efficient exchange of information, may participate in the College in an appropriate way.

3.3. Coordination arrangements

Explanatory text

- 3.61. According to Article 248 (4), the establishment and functioning of colleges shall be based on coordination arrangements determined by the group supervisor, following consultation with the supervisory authorities concerned. In the case of diverging views concerning the coordination arrangements, any member of the college may refer the matter to CEIOPS. The group supervisor, following the consultation with the supervisory authorities concerned, shall duly consider any advice produced within two months by the CEIOPS before taking its final decision. The decision shall be set out in a document containing the fully reasoned decision and an explanation of any significant deviation from any advice given by the CEIOPS. The group supervisor shall transmit the decision to the other supervisory authorities concerned.
- 3.62. In accordance to Article 248 (5), and without prejudice to any measure adopted pursuant to Directive, the coordination arrangements should specify the procedures for:
- (a) the decision-making process among the supervisory authorities concerned as referred to in
- Article 231 (group internal model) concerning the cooperation between supervisory authorities concerned to decide whether or not to grant the permission to calculate the consolidated SCR on the basis of an internal model, and to determine the terms and conditions, if any, to which such permission is subject,
 - Articles 232 and 233(6) (group capital add-on)
 - and Article 247 (group supervisor)
- (b) the consultation referred to in paragraph 4 and in Article 218(5).

Without prejudice to the rights and duties allocated by the directive to the group supervisor and to other supervisory authorities, the coordination arrangements may entrust additional tasks to the group supervisor or the other supervisory

authorities. In addition, the coordination arrangements may specify

(a) the consultation among the supervisory authorities concerned, in particular as referred to in

- Article 213: case of application of group supervision
- Article 214: scope of group supervision
- Article 215: ultimate parent undertaking at Community level
- Article 216: ultimate parent undertaking at national level
- Article 217: parent undertaking covering several Member States
- Article 219: frequency of calculation
- Article 220: choice of method
- Article 221: inclusion of proportional share
- Article 222: related third-country insurance and reinsurance undertakings
- Article 244: supervision of risk concentration
- Article 245: supervision of intra-group transactions
- Article 250: consultation between supervisory authorities
- Article 260: parent undertaking outside the Community: verification of equivalence
- Article 262: parent undertakings outside the Community: absence of equivalence

(b) the cooperation with other supervisory authorities.

- 3.63. In its advice to the European Commission on aspects of the Framework Directive Proposal related to Insurance Groups (CEIOPS-DOC-25/08), CEIOPS advocated that the group supervisor together with the members of the College of Supervisors should lay down any arrangements on group supervision in written bilateral or multilateral agreements, addressing both regular and crisis situations (for crisis situations see section 3.6).
- 3.64. As also follows from the Level 1 text article 248 (5), such agreements shall lay down the basis for the cooperation between supervisors, describing the organisation of the College, of supervisory activities and the role of supervisory authorities.
- 3.65. CEIOPS considers that the coordination arrangements should be in writing and shall include terms of reference and mention how the cooperation and exchange of information (IT tools, ...) will be achieved, both in regular and emergency situations:

- Among the supervisory authorities within the college of supervisors
 - Between the college and the group
 - With other supervisory authorities (whose participation is limited to achieving the objective of efficient exchange of information –article 248.3)
 - And, if relevant, with other competent authorities.
- 3.66. CEIOPS considers there is strong link between confidentiality, coordination arrangements and participation in the College. The inability of supervisors to sign coordination arrangements may necessitate closed sessions.
- 3.67. The coordination arrangements should include in particular :
- A work plan on which the college of supervisors has agreed;
 - An emergency plan, further described in subsection 3.6.
- 3.68. CEIOPS will further work for L3 measures on the content of both plans.
- 3.69. The College of Supervisors shall agree on a workplan for the supervision of the group. The workplan shall be based on the coordination arrangements. As further described in subsection 3.6 the College of Supervisors shall also have an emergency plan as part of or based on the coordination arrangements (cf. paragraph 3.96, 3.97 and 3.112).

CEIOPS' advice

- 3.70. CEIOPS considers that the coordination arrangements should be in writing and shall include terms of reference and mention how the cooperation and exchange of information (IT tools, ...) will be achieved, both in regular and emergency situations:
- Among the supervisory authorities within the college of supervisors
 - Between the college and the group
 - With other supervisory authorities (whose participation is limited to achieving the objective of efficient exchange of information –article 248.3)
 - And, if relevant, with other competent authorities.
- 3.71. CEIOPS considers there is strong link between confidentiality, coordination arrangements and participation in the College. The inability of supervisors to sign coordination arrangements may necessitate closed sessions
- 3.72. The coordination arrangements should include in particular :

⁵ One member considers that the requirement for a workplan should be subject to an impact assessment before being adopted as a Level 2 implementing measure.

- A work plan on which the college of supervisors has agreed⁵;
- An emergency plan, further described in subsection 3.6.

3.4. Organization and establishment of Colleges

Explanatory text

- 3.73. According to recital 114, the activities of the College shall be proportionate to the nature, scale and complexity of the risks of the group and the cross-border dimension. Moreover, article 248 (3) states that the effective functioning of the College may require that some activities will be carried out by a reduced number of supervisory authorities within the college.
- 3.74. CEIOPS considers that flexibility is essential, meaning that supervisors have to be allowed to organise themselves according to the group's structure, business model and risks. The organisation of the Colleges of Supervisors shall be appropriate and proportionate to the organisation and complexity of the Group and to the assessment of the Group's soundness, and reflect the activities, risk profile and the legal structure of the Group.
- 3.75. However, CEIOPS considers that additional guidance could facilitate, subject to the need for flexibility, convergence in supervisory practices. This could be achieved by identifying possible multi-level arrangements in order to increase the harmonization of regulatory approaches while acknowledging the different roles of supervisors.

3.4.1. Establishment of Specialized Supervisory Teams

- 3.76. CEIOPS noted in its previous advice (CEIOPS's Advice to the European Commission on aspects of the Framework Directive Proposal related to Insurance Groups (CEIOPS-DOC-25/08)) that within the College of Supervisors the supervisors could have formalised roles in the on-going supervision of the group whereupon smaller supervisory teams could be established, depending of the specificities of the Group.
- 3.77. These specialized supervisory teams would discuss matters relating to their specific topic or specific issues noted across the group. They would then be responsible for providing views on their respective topics and highlighting any identified issues (e.g. material differences in reserving methodologies across the group, perceived governance failures in subsidiaries, low SCR coverage in certain jurisdictions and corrective actions according to the supervisory ladder, group ORSA including future threats to subsidiaries solvency positions, group financial soundness ,etc.) and recommended actions for discussion at the College of Supervisors. The methods and intensity of the work of the College and supervisory teams would depend on the scale, nature and complexity of the (re)insurance group.

3.4.2. Composition of the Specialized Supervisory Teams

- 3.78. Any supervisor who is able to participate in any supervisory team would be permitted, but not obliged, to do so. However, solo supervisors who have subsidiaries that are material to the (re)insurance group by their scale or risk exposure would be encouraged to participate in all the supervisory teams.
- 3.79. These specialized supervisory teams could comprise of the supervisors who are able to participate in supervisory activities such as:
- The assessment of the group solvency position;
 - The approval of the group internal model;
 - The analysis of intra group transactions and risk concentration.
- 3.80. Supervisory teams shall also depend on the nature, scale and complexity of the risks of the group and the cross-border dimension.

3.4.3. Functioning of the College

- 3.81. All relevant activities shall be properly laid down in coordination arrangements (see previous sub-section 3.3.). These shall then clearly describe the activities of the College, including in crisis situations (which is further described in subsection 3.6), and the role of the supervisory authorities, including by means of delegation, as also referred in article 248 (5), or by sharing some operational activities. CEIOPS notes the ongoing 3L3 work on the delegation of tasks and responsibilities.
- 3.82. The College of Supervisors shall meet regularly, depending on the risk-based assessment made by the College. This should be at least annually. However, considering the proportionality principle, the meeting may take different forms. The College may consider it appropriate in some cases to exchange information by other channels, including the use of telephone conference, video conference, email and letter. Face-to-face meetings are nevertheless considered essential for more complex groups, at least for an initial meeting, or for extraordinary circumstances (e.g. crisis (see 3.6.)).
- 3.83. The group supervisor after dialogue within the College should be responsible for the communication with the group at its top level (parent level). Solo supervisors should then communicate any measures applied at top level to the subsidiaries.
- 3.84. The initiative to convene the College of Supervisors shall be taken by the group supervisor except in justified circumstances where any other supervisory authority participating in the College can call for a meeting. CEIOPS believes that the referred justified circumstances shall in principle refer to the ones set out in Article 249(2) taking into account the nature, scale and complexity of the risks inherent in the business of the group. CEIOPS may develop further Level 3 in that respect.

3.4.4. Assessment of efficiency

- 3.85. The CEIOPS shall elaborate and update guidelines for the operational func-

tioning of colleges on the basis of comprehensive reviews of the work of the colleges to assess the level of convergence between them. Such reviews shall be performed at least every three years. (Article 248 (6) of the Level 1 text).

- 3.86. In that respect, the group supervisor transmit to the CEIOPS the information on the functioning of the college and any difficulties encountered relevant for the reviews.
- 3.87. The current methodology to review the functioning of Coordination Committees as well as the experience gathered through CEIOPS review panel will serve as a basis for the reviews. Existing guidelines on Coordination Committees or financial conglomerates may also be used to develop guidelines for the operational functioning of Colleges.

3.4.5. Establishing Colleges

- 3.88. When Coordination Committees are already in place, they shall serve as a basis for the establishment of Colleges of supervisors.
- 3.89. The establishment of the colleges should follow a series of steps:
- ❶ Identification of group supervisor, article 247
 - ❷ Identification of relevant college members, article 248 (4)
 - ❸ Contact college members / solo supervisors;
 - Invitation to the first meeting, article 248 (5)
 - ❹ Constitutional meeting / drafting of a cooperation arrangement
 - ❺ Agreeing on cooperation arrangement
- 3.90. CEIOPS will publish a consultation by January 2010 on pre-application process for the approval of internal models that will use the structure of Coordination Committees.

CEIOPS' advice

- 3.91. Supervisory authorities have to be allowed to organize themselves according to the group's structure, business model and risks.
- 3.92. CEIOPS believes that within the College of Supervisors the supervisors could have formalised roles in the on-going supervision of the group whereupon smaller supervisory teams could be established, depending of the specificities of the Group. These specialized supervisory teams would discuss matters relating to specific topic or specific issues noted across the group. They would then be responsible for providing views on their respective topics and highlighting any identified issues and recommended actions for discussion at the College of Supervisors. The methods and intensity of the work of the College and supervisory teams would depend on the scale, nature and complexity of the (re)insurance group.

- 3.93. The coordination arrangements shall clearly describe the activities of the College, including in crisis situations and the role of the supervisory authorities, including by means of delegation or by sharing some operational activities. CEIOPS notes the ongoing 3L3 work on the delegation of tasks and responsibilities.
- 3.94. The College of Supervisors shall meet regularly, depending on the risk-based assessment made by the College. The initiative to convene the College of Supervisors shall be taken by the group supervisor except in justified circumstances where any other supervisory authority participating in the College can call for a meeting. CEIOPS believes that the referred justified circumstances shall in principle refer to the ones set out in Article 253 (1a) taking into account the nature, scale and complexity of the risks inherent in the business of the group. CEIOPS may develop further Level 3 in that respect.

3.5. Professional secrecy and confidentiality

Explanatory text

- 3.95. According to the recital on article 248, the activities of the College shall be proportionate to Article 253 which states that:

Member states shall authorise the exchange of the information between their supervisory authorities and between their supervisory authorities and other authorities, as referred to in Articles 249 to 252.

Information received in the framework of group supervision, and in particular any exchange of information between supervisory authorities and between supervisory authorities and other authorities which is provided for in this Title, shall be subject to the provisions on professional secrecy and communication of information laid down in Article 295.

- 3.96. Since there is no uniform European framework for the handling of confidential information, it is up to individual supervisors to ensure the security of such information.
- 3.97. Supervisors participating in the Colleges are encouraged to make arrangements to facilitate the use of encrypted IT systems.
- 3.98. The information exchange between supervisors shall take into account national laws and regulations concerning professional secrecy and existing bilateral or multilateral MoU.
- 3.99. The authorities of third countries may participate in information sharing subject to the directive requirements on the equivalence of third country professional secrecy provisions.

CEIOPS' advice

- 3.100. Supervisors shall ensure the safe handling of confidential information and pro-

professional secrecy and shall have appropriate systems and structures in place to fulfill the requirements laid down in Article 257, as well as they have a written policy ensuring the on-going compliance with these requirements

- 3.101. The authorities of third countries may participate in information sharing subject to the directive requirements on the equivalence of third country supervisory and prudential regimes and professional secrecy provisions.
- 3.102. The information exchange between supervisors shall take into account national laws and regulations concerning professional secrecy and existing bilateral or multilateral MoU.
- 3.103. The authorities of third countries may participate in information sharing subject to the directive requirements on the equivalence of third country professional secrecy provisions.

3.6. Cooperation and information sharing in crisis situations

Explanatory text

- 3.104. Article 249 (1) states that the authorities responsible for the supervision of the individual insurance and reinsurance undertakings in a group and the group supervisor shall cooperate closely, in particular in cases where an insurance or reinsurance undertaking encounters financial difficulties. As stated in article 248(4) the functioning of the College of Supervisors shall be based on coordination arrangements (see section 3.3) concluded by the group supervisor and the other supervisor authorities concerned. These coordination arrangements should address both regular and emergency situations. The coordination and cooperation should be developed in these coordination arrangements to enhance the preparedness in normal times and deal with the different natures and stages of a crisis, while preserving the sufficient flexibility and time to deal with the specific circumstances of a crisis.
- 3.105. An insurance undertaking in crisis can be defined as potentially being partially or totally unable to settle its claims and to pay to its policyholders their benefits.
- 3.106. The Memorandum of Understanding on Cooperation between the Financial Supervisory Authorities, Central Banks and Finance Ministries of the European Union on Cross-Border Financial Stability ("the Crisis MoU") of 1 June 2008 was entered into in order to ensure cooperation in financial crisis between the parties through appropriate procedures for sharing of information and assessments preparing them for the management and resolution of a cross-border financial crisis.
- 3.107. The role of the supervisory authorities may vary depending upon the nature and stage of a crisis. The coordination arrangements should concentrate on the work of the Colleges related to insurance undertakings and insurance groups, but they should also take into account the role of insurance supervisory authorities in case of a crisis in a cross-sectoral group or in several cross-sectoral groups. The

Crisis MoU establishes the basis for the cooperation with other financial supervisory authorities within the banking and securities sectors as well as finance ministries and central banks.

- 3.108. Following the current financial crisis CEIOPS launched a lessons to be learnt project in the autumn 2008 where the working groups have looked into the crisis, analysed different aspects related to the insurance sector, including cooperation among supervisors in relation to the supervision at the level of the group, and identified potential areas for improvement to ensure that Solvency II can operate both in normal and stressed times. The Insurance Groups Supervision Committee has also performed "case studies" to examine the functioning of the Coordination Committees in crisis.
- 3.109. Based on the results of these studies, CEIOPS considers that some specific issues related to the work of the colleges and the supervision at group level in a crisis situation should be dealt within the implementing measures, either at Level 2 or Level 3.

3.6.1 Preparation for crisis management

- 3.110. In order to ensure preparedness in a crisis situation, the College of Supervisors should in normal times engage in sharing and reflecting upon information and assessments relating to issues of common interest based on Article 249(1) second paragraph and the Level 2 implementing measures, cf. 3.1.2 above.
- 3.111. The College of Supervisors should also engage in sharing and reflecting upon information needed for assessing the systemic implications of a crisis and for the handling of a cross-sectoral systemic financial crisis. The supervisory authorities should be aware of the potential channels of contagion from the insurance undertakings of the group to other financial undertakings or to the real economy and from other financial sectors to the insurance sector.
- 3.112. To be fully prepared for any action that may be required, the College of Supervisors should analyse beforehand any crisis situation that may arise and any potential conflict of interest. This could be done by potential scenarios which would give rise to stress⁶ and a crisis situation for the group it is supervising and by monitoring the analysis of, and potentially any warnings or recommendations issued by, the future European Systemic Risk Council. Furthermore, the College of Supervisors should agree on a specific emergency plan, including cooperation and coordination in these kinds of situations. The emergency plan should be based on the specific risks of the insurance group. It may be natural for the College to agree that crisis situations regarding the insurance group should always involve the top level of the supervisory authorities.
- 3.113. The emergency plan could be developed as a part of the coordination arrangements or as a separate plan with the basis in the coordination arrangements.
- 3.114. As stated in paragraph 3.76 above, the coordination arrangements for the

⁶ See CP60 and 61

College of Supervisors shall describe the activities and the role of the supervisory authorities, including by means of delegation or by sharing some operational activities. The College of Supervisors should in advance consider whether there are any specific tasks that could be delegated in a crisis situation.

- 3.115. The Crisis MoU prescribes that the parties will endeavour to conduct, as part of contingency arrangements for managing crisis situations, simulation exercises, to enhance the preparedness for handling crisis situations. Furthermore, the experiences from the current crisis showed unclear responsibility for the organisation of the cooperation and meetings among the supervisors were not organised before the crisis. To avoid this to happen in the future and enhance the preparedness, the emergency plan should be tested by the College of Supervisors. The College should agree on the extent and the frequency of the testing of emergency plans and crisis exercises.

3.6.2 Crisis alert and exchange of information

- 3.116. The supervisory authority who becomes aware of the emergence of a potentially serious financial disturbance or is aware of facts or events that may give rise to significant problems for an insurance group or the functioning of financial markets, will inform as soon as possible the group supervisor. The group supervisor or the mentioned supervisory authority should ensure that information is shared within the College of Supervisors as soon as practicable.

- 3.117. In addition to the ongoing exchange of information within the College of Supervisors, the following information should be considered relevant to be exchanged as soon as practicable in a crisis situation:

- affected entities
- description of the crisis
- the latest financial information about the affected entities
- significance of the affected entity
- impact on the financial market
- systemic assessment results
- any measures or recovery actions taken by the group
- existing national safety net arrangements

- 3.118. The College of Supervisors should consider whether it is necessary to inform other relevant authorities or to share the information within cooperation arrangements established pursuant to the Crisis MoU.

- 3.119. Concerning actions to be taken on a cross-border basis the group supervisor should activate the steps and procedures that should be established in the emergency plan and in Level 3 guidance developed by CEIOPS. The activation may be requested by any member of the College. When the procedures are activated, all supervisory authorities concerned should be involved at an early stage.

3.6.3 Crisis assessment and crisis management

- 3.120. After a crisis alert, the group supervisor should as soon as practicable assess the nature of the financial crisis and its implications. The other supervisory authorities should assist the group supervisor to reach a common understanding within the College of the nature of the crisis in the cross-border context and perform its own assessment of the crisis and its implications at a national level. The goal of the assessment phase is to assess the systemic implications and provide a basis for the decision of whether to intervene, and if so, how to intervene.
- 3.121. Considering that the assessment is being performed within the College of Supervisors it should be taken upon the perspective of the specific implications for the relevant insurance group, including identification of possible sources of systemic risk and wider implications for the financial system and the real economy. The College of Supervisors should especially pay attention to the potential channels of contagion identified, including any intra-group transactions observed prior to or during the crisis situation. Intra-group transactions in crisis situations are dealt with in the CEIOPS Advice for Level 2 implementing measures about Supervision of Risk Concentration and Intra-Group Transactions. Furthermore, the College of Supervisors should focus on the liquidity position of the group, with the perspective of the possibility to rapidly transfer assets to the undertaking in crisis. This is further dealt with in the CEIOPS Advice for Level 2 Implementing Measures on Solvency II: Assessment of Group Solvency
- 3.122. The management and resolution of a cross-border crisis require close cooperation between the supervisory authorities and well structured coordination based on procedures and processes agreed upon in normal times taking into account the tasks and responsibilities set out in the legal framework and the Crisis MoU. It should be taken into account that other authorities, such as ministries and central banks and their cooperation arrangements may take part in and be responsible for the crisis management and resolution.
- 3.123. In a crisis situation in an insurance group, the group supervisor will coordinate the supervisory activities, as stated in article 248(1)(e), and will in close cooperation with the other supervisory authorities, coordinate the management of the situation. In case of a cross-border systemic financial crisis, the situation may require the management and resolution at the ministries level in several countries, and the supervisory authorities should be expected to be involved as technical experts by the relevant ministries. The supervisory authorities may be expected to gather and update data that could be used as a basis for possible public interventions and assess the possibilities to use various tools
- 3.124. Based on the crisis assessment, the College of Supervisors should analyse the need, scope and conditions for any supervisory actions to be taken towards the insurance group or any of its undertakings.

3.6.4 External communication

- 3.125. The group supervisor is in charge of coordinating the public communication at each stage of a crisis. It should ensure that the communication (or non communication) of the supervisory authorities take into consideration the communication of the insurance group to the public. In such situations, the insurance

group will normally be obliged to disclose information according to article 54.

- 3.126. Communication towards the public should, to the maximum extent possible, be handled in a coordinated fashion at all stages of the crisis. The supervisory authorities should prepare joint public statements, even in cases where only one supervisor has to make such a statement, if the interests of the others may be at stake.

CEIOPS' advice

- 3.127. The coordination and cooperation within the College of Supervisors should be developed in coordination arrangements to enhance the preparedness in normal times and deal with the different natures and stages of a crisis.
- 3.128. To be fully prepared for any actions that may be required and taking into account the role played in crisis management by central banks and of Ministries of finance and communication to the public, the College of Supervisors should agree on a specific emergency plan based on the specific risks of the insurance group, as part of or based on the coordination arrangements. The emergency plan should include provisions on the preparation for crisis management, crisis alert, crisis assessment, crisis management and external communication. The emergency plan should be tested in the extent and with the frequency agreed by the College of Supervisors.
- 3.129. In crisis situation, the group supervisor initiates and coordinates the subsequent procedures, such as information exchange, review and assessment of the respective situation and cooperates closely with the supervisory authorities within the college.
- 3.130. The College of Supervisors should engage in sharing and reflecting upon information needed for assessing the implications of a crisis and the handling of a cross-border financial crisis.
- 3.131. In addition to the ongoing exchange of information within the College of Supervisors, the following information should be considered relevant to be exchanged as soon as practicable in a crisis situation:
- affected entities
 - description of the crisis
 - the latest financial information about the affected entities
 - significance of the affected entity
 - impact on the financial market
 - systemic assessment results
 - any measures or recovery actions taken by the group
 - existing national safety net arrangements.

3.7. Further Level 3 guidance

3.132. CEIOPS may develop Level 3 guidance to encourage more convergence and ensure an adequate level of harmonisation. The guidance may cover the following issues:

- The procedures for the assessments and reviews foreseen in Level 1 text;
- The other tasks, measures and decisions assigned to the group supervisor by the Directive or deriving from its application;
- The coordination arrangements in accordance with article 248 (4) and (5);
- Further practical organisational issues, including delegation of tasks (e.g. types of tasks that can be or not be delegated, extent, terms and conditions) if not specifically addressed within the 3L3 work on delegation of tasks;
- Criteria for the inclusion of participants within the specialised supervisory teams (e.g. the significance of undertakings within the group and/or in their Member States' markets);
- The preparation, assessment and management of a financial crisis. The Level 3 guidance may take into consideration the Crisis MoU and the Guidelines on preparation for and management of a financial crisis of 26 March 2009 to the extent these are applicable within the Framework Directive Proposal;
- The external communication, especially in crisis situation.

Annex 1 - Impact assessment – Supervisory co-operation and co-ordination

A.1. In its Call for Advice of 1 April 2009, the Commission has asked CEIOPS to contribute to the Commission's impact assessment of the Level 2 implementing measures⁷. To this end, a list of issues have been established by the Commission and CEIOPS, identifying the Level 2 implementing measures that should be accompanied by an impact assessment. The objectives of the issues have been selected among the list of objectives used by the Commission in its Level 1 impact assessment⁸. On 12 June 2009, the Commission has issued an updated list of policy issues and options, to which reference is being made⁹. This impact assessment covers issue 17 of the list of policy issues and options. Two summary tables accompany the impact assessment, they are published in a separate excel document.

1) Description of the policy issue

A.2. Solvency II aims at making group supervision more effective and efficient, in particular by strengthening co-operation, information exchange and co-ordination amongst EEA supervisors. In particular, in the context of group supervision, a number of decisions will have to be taken jointly (by the supervisory authorities concerned), or in consultation with other supervisory authorities, which calls for solid and practical co-ordination arrangements.

A.3. The issue relates to the further specification at Level 2 of the principles set out in Level 1 text, in order to provide for an appropriate legal framework for the following co-operation and co-ordination arrangements.

A.4. In the following sections two aspects of this policy issue will be analysed:

- Sub-issue A: Participation of branches to the College
- Sub-issue B: Frequency of College meetings

A. Participation of branches to the College

A.5. Article 252 (3) of the Level 1 text states that the membership to the college shall include the group supervisor and the other supervisory authorities of all the Member States in which the head offices of subsidiary undertakings are situated. The supervisory authorities of

⁷ <http://www.ceiops.eu/media/files/requestsforadvice/EC-april-09-CfA/EC-call-for-advice-Solvency-II-Level-2.pdf>

⁸ http://ec.europa.eu/internal_market/insurance/docs/solvency/impactassess/final-report_en.pdf

⁹ <http://www.ceiops.eu/media/files/requestsforadvice/EC-June-09-CfA/Updated-List-of-policy-issues-and-options-for-IA.pdf>

significant branches and related undertakings shall also be allowed to participate in the College of Supervisors.

- A.6. In its advice to the European Commission on aspects of the Framework Directive Proposal related to Insurance Groups (CEIOPS-DOC-25/08), CEIOPS advocated for the **membership of all supervisors** in the College, as a way to assure that decisions taken are transparent and take into account the views and concerns of all supervisors. This is consistent with CEIOPS approach under Solvency I regime where all subsidiaries' supervisors are invited to participate in the Coordination Committees (Co-Cos).
- A.7. On this issue, the financial crisis showed that the whole group, directly or indirectly, may be affected and therefore coordination and exchange of information among supervisors is crucial. Without prejudice to Article 250(2), CEIOPS believes that all supervisors shall be kept informed about all essential and relevant information. Therefore CEIOPS considers that the provisions on exchange of information in the Sienna protocol remain relevant under Solvency II. Those provisions can be reflected in possible level 3 guidance.
- A.8. However, the **participation** of significant branches to the College shall only be **limited** to achieving the objective of **efficient exchange of information**. The **effective functioning of the college** may require that some activities will be carried out by a reduced number of supervisory authorities within the college.
- A.9. Hence, the Level 1 text (article 248 (7)) foresees that the Commission shall adopt implementing measures on the **definition of a significant branch**.

B. Frequency of College meetings

- A.10. According to article 248 (1e) of the Level 1 text the rights and duties assigned to the group supervisor with regard to group supervision shall comprise the planning and co-ordination, through regular meetings held at least annually or other appropriate means of information exchange and decision making, of supervisory activities in going concern as well as in emergency situations, in cooperation with the supervisory authorities concerned and taking into account the **nature, scale and complexity of the risks** inherent in the business of all undertakings that are part of the group. In other words, Colleges should meet **regularly** to discuss the specific activities for the group and set up a working plan in order to assure a more efficient and effective group and solo supervision and timely and coordinated action.

2) Detailed description of policy options and assessment of the relative impacts on industry, policyholders and beneficiaries and supervisory authorities

2a) Detailed policy option description

A. Participation of branches to the College

Option 1

Level 2 measures should include legally binding **quantitative thresholds** for the determination of significant branches for essential decision making processes, and potentially the participation of branches to the College.

Option 2

Level 2 measures should include non-legally binding **indicative thresholds** (quantitative, qualitative or a combination of both) for the determination of significant branches for essential decision making processes and participation to the College.

- A.11. According to the Level 1 text, the participation of significant branches shall be limited to achieving the objective of efficient exchange of information.
- A.12. In case the significance of a branch is assessed by using quantitative thresholds as **binding or indicative** criteria, there is the question which thresholds could be implemented. Aiming to have as much as possible an adequate level of cross-sector consistency, CEIOPS took into consideration the Capital Requirements Directive (CRD) framework and its recent amendments as well as the Financial Conglomerates Directive (FCD). According to the CRD a branch of a credit institution is considered to be systemically relevant if, inter alia, its market share in terms of deposits held exceeds 2% in the **host Member State** (article 129 (1)). Regarding the FCD (article 2.17), regulated entities of the conglomerate are relevant if, for instance, their market share in **other Member States** exceeds 5% (see page 6 for further discussion).
- A.13. Other possible non-legally binding criteria could be the significance of a branch for its local market or the specificity of its risk profile.

B. Frequency of College meetings

Option 1

Level 2 measures shall establish a minimum frequency of College meetings.

Option 2

Frequency of college meetings and contacts between supervisors shall depend on the work plan and the risk-based assessment made by the College, but should take place at least annually as required by the Level 1 text.

2b) Impact on industry, policyholders and beneficiaries and supervisory authorities

A. Participation of branches to the College

Likely Industry Response

A.14. As the supervision of branches will continue to be exercised by the home supervisor, the additional participation of significant branches to the College – whether derived from quantitative or indicative thresholds – generates no direct impact on the industry in terms of operational costs or additional burden.

Costs and Benefits

A.15. As the local supervisor has – apart from the market supervision – only a few prudential powers concerning a branch, neither for the insurer nor the policyholders or beneficiaries any incremental costs are expected. In contrast, a non-measurable indirect benefit could evolve from the fact that the local supervisor participates in the discussion about the supervisory standards in general and the impact in each local country of the group. In this way, the policyholder could also benefit from the participation of their local supervisor in case they (indirectly) represent the policyholders' interests. However, such indirect benefit is not clearly distinguishable between the two policy options presented.

A.16. A quantitative threshold for assessing the significance of branches by the home supervisor (option 1) would facilitate co-operation between insurance supervisory authorities assuring a high level of harmonisation, but, on the other hand, could prevent an adequate level of flexibility, especially in crisis situations. If a branch does not fulfil quantitative thresholds, but is nevertheless relevant for the local market (e.g. in case of a specific risk profile), the solo supervisor cannot even indirectly pursue his objectives (protection of the policyholders and stability of the financial market).

A.17. Assuming that option 2 by establishing quantitative and/or qualitative aspects for the determination of significant branches is associated with a higher number of College participants, the preparation of a College is more costly, more time-consuming, and the outcome of a College meeting is likely to be less efficient.

B. Frequency of College meetings

Likely Industry Response

A.18. The industry could argue that option 1, i.e. the establishment of a minimum frequency of College meetings, is not in line with the risk-oriented approach of Solvency II. Therefore, the industry is likely to prefer a continuous, well organised and risk-based supervisory review process (option 2), so that potential weaknesses can be

identified and eliminated promptly, more effectively and in a well coordinated way.

Costs and Benefits

- A.19. For policyholders and insurers, there is no direct impact recognisable. If Level 2 measures provide that college meetings are to be held more than once annually (option 1), the indirect burden on the insurer will tend to be higher. As the frequency of College meetings depends on the risk situation of the insurer, there is no clear cost effect derivable from option 2. A positive aspect is that the College has to set up a work plan and has to evaluate the risk situation of the insurer on a continuous basis. This commitment ensures that the group is informed about the relevant shortfalls at any time.
- A.20. From the perspective of the policyholder option 1 would prevent that the number of College meetings depends on the risk assessment of the College. A risk-oriented supervisory approach (option 2) contributes to an improved protection of policyholders and beneficiaries.
- A.21. The following principle applies: The more frequent College meetings take place, the more operational costs incurred by the group supervisor. In this context, a legally binding frequency as foreseen by option 1 is **inflexible** and **not risk-sensitive**. If the frequency of college meetings depends on the work plan and the risk-based assessment made by the college (option 2), the **quality of supervision**, e.g. the exchange of information, **improves**. However, the group supervisor has to evaluate the risk situation of the group continuously, in order to decide on convening the College, whenever appropriate.

3) Specific and Operational objectives

- A.22. The "Processes and procedures to enhance supervisory co-operation and co-ordination" falls under the scope of objectives with different levels. Firstly, the **specific objectives** deemed relevant for this policy option are **"Advance supervisory convergence and co-operation"** and **"Increase transparency"**. Finally, the relevant **operational objectives** are **"Harmonise supervisory powers, methods and tools"** and **"Ensure efficient supervision of insurance groups and financial conglomerates"**. The last two objectives also consider the compatibility with prudential standards for the European banking sector and compatibility with the IAIS¹⁰ principles and standards that are fundamental to effective insurance supervision.

¹⁰ [IAIS Insurance Core Principles and Methodology, October 2003.](#)

[IAIS Principles of Group-Wide Supervision, October 2008.](#)

4) Comparison between the different options based on the efficiency and effectiveness in reaching the relevant objectives defined in section (3)

A.23. The comparison and ranking of the policy options will be based on the effectiveness and efficiency of each of them in reaching the relevant objectives defined in point (3), especially the operational objectives. The source of evidence to assess this aim will be the qualitative information gathered from the different Co-Co-surveys, complemented by a qualitative judgement.

A. Participation of branches to the College

A.24. When limiting the participation of host supervisors of branches to the College, further consideration is needed in order to assess which quantitative thresholds should be applied, or even, if quantitative thresholds can be established. On this issue, CEIOPS acknowledges that a legally binding quantitative threshold (option 1) would facilitate co-operation between insurance supervisory authorities assuring a high level of **harmonisation of supervisory powers, methods and tools** and **promoting consistency with the CRD and FCD prudential frameworks**, but, on the other hand, could **prevent an adequate level of flexibility and efficiency in achieving these objectives compared to option 2**.

A.25. The participation of branches' supervisory authorities in the College meetings may be necessary in order to assure a permanent platform for cooperation and the coordination of appropriate supervisory actions. The participation of branch supervisors could be especially foreseen in College meetings where issues specific to that branch are discussed or where their participation is relevant in terms of risks for the group or its systematic relevance to Member States' markets.

A.26. CEIOPS considers that there are two different approaches to the participation of any branch' supervisor in the College:

- The branch' supervisor requests on its **own initiative** to participate in the College. Where a supervisor from a Member State with a branch of the group presents a reasoned request to participate in the College, CEIOPS considers that the branch supervisor should be able to participate in the College unless properly justified by the group supervisor following consultation with the other supervisory authorities within the College. In the case of diverging views, the branch supervisory authority may refer the matter to the CEIOPS following the procedure foreseen in article 252 (4) of the Level 1 text.
- Where **no** such **request** has been made on the initiative of the branch' supervisor, the branch supervisor's participation should be based on

the **judgment by the group supervisor** that participation is relevant given the significance of the branch within the group or in its local market, following the consultation with the other supervisory authorities within the College. This judgment should be supported on the basis of **quantitative and/or qualitative** criteria (option 2) related to the significance of the branch within the **group** and/or in their **local** market, as illustrated by the following set of criteria as an example:

- 5% threshold: if the market share in terms of gross written premiums exceeds 5% in the members state or if its gross written premium volume exceeds 2% of the consolidated gross written premium volume of the group;
- Importance of the branch given the global risk profile of the group (e.g. where the potential contribution of the branch to the group SCR is above a material level);
- Supervisory authorities of newly entered branches in the group, taking into account the ultimate impact to the group's overall operations;
- Supervisors that bring insight into the specific nature of local governance cultures that may have an impact both locally and/or the group as a whole.

A.27. CEIOPS has undertaken some discussions on the appropriateness of using 2% (CRD) or 5% (FCD) as the **indicative** threshold. CEIOPS considers that the outcome of option 2 would still contribute to achieving **compatibility with the CRD and FCD prudential frameworks, promoting also an efficient supervision of insurance groups especially in the context of a financial conglomerate.**

A.28. The above mentioned set of combined criteria would require further development and refinement.

B. Frequency of College meetings

A.29. The Level 1 text foresees that the College of Supervisors shall meet regularly.

A.30. Since the establishment of a minimum frequency according to option 1 is inflexible and thus **inefficient**, the frequency of College meetings should depend on the workplan and the **risk-based assessment made by the College** (option 2). This should be at least annually, as required by the Level 1 text.

A.31. However, considering the proportionality principle, the meeting may take different forms. The College may consider it appropriate in some cases to exchange information by other channels, including the use of

telephone conference, video conference, email and letter. Face-to-face meetings are nevertheless considered essential for more complex groups, at least for an initial meeting, or for extraordinary circumstances (e.g. restructuring of the group which affects significant parts of the group, crisis situations (see 3.6.)).

- A.32. The group supervisor after dialogue within the College should be responsible for the communication with the group at its top level (parent level). Solo supervisors should then communicate any measures applied at top level to the subsidiaries.
- A.33. The initiative to convene the College of Supervisors shall be taken by the group supervisor except in justified circumstances where any other supervisory authority participating in the College can call for a meeting. CEIOPS believes that the referred justified circumstances shall in principle refer to the ones set out in Article 253 (1a) taking into account the nature, scale and complexity of the risks inherent in the business of the group.