

Membership, Charter and the legal nature of the standards

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

For most of its existence, the Committee was a club of the G10 countries plus Switzerland, Luxembourg and later Spain. This narrow membership became untenable when the G20 assumed leadership of financial reform in 2008. In March 2009, the Committee admitted Australia, Brazil, China, India, Korea, Mexico and Russia, and in June 2009 Argentina, Hong Kong, Indonesia, Saudi Arabia, Singapore, South Africa and Turkey followed. The Committee now comprises forty-five members from twenty-eight jurisdictions, consisting of central banks and bank supervisors, with the European Central Bank and the Single Supervisory Mechanism among them.¹ Switzerland is represented by the Swiss National Bank and FINMA.

In January 2013, the Committee adopted a Charter for the first time. It defines the mandate as strengthening "the regulation, supervision and practices of banks worldwide with the purpose of enhancing financial stability". The Charter describes the Committee's governance, with the Group of Central Bank Governors and Heads of Supervision as its oversight body, its decision-making by consensus, its working groups and its secretariat.² The Charter also states the legal position plainly. The Committee does not possess any formal supranational authority, which means that its decisions have no legal force. Its standards are minimum requirements that members commit to implement in their domestic law within the agreed timeframes.

The Basel standards are therefore a classic example of what international lawyers call soft law. They are not treaties within the meaning of the Vienna Convention on the Law of Treaties and create no obligations under public international law. The Committee has no legal personality of its own. Its secretariat is staffed by the BIS, an international organisation founded by treaty in 1930. The standards acquire binding force only when national legislators or supervisors incorporate them into domestic law, as

the EU does through regulations and directives and Switzerland through the Banking Act, the Capital Adequacy Ordinance and the Liquidity Ordinance.³

The efficacy of soft law in this field rests on several mechanisms. Members have committed themselves politically through the G20 and the GHOS, while markets, rating agencies and counterparties treat compliance with Basel as a sign of soundness. The IMF and the World Bank assess countries against the Core Principles, and the RCAP exposes deviations to peer pressure. For banks themselves, the question of whether a standard is binding in international law is largely academic, since they face the national rules that implement it. For a lawyer advising a cross-border banking group, the practical task is to compare national transpositions, identify the national discretions and assess the risk that a jurisdiction will deviate.⁴

1 Notes

1. Basel Committee press releases on membership expansion of 13 March 2009 and 10 June 2009; current membership as listed on the BIS website. Figures to be verified. ↩
2. Basel Committee, Basel Committee Charter (January 2013, updated June 2018), sections 1 (mandate), 4–6 (members, GHOS and Committee) and 10 (decision-making by consensus). To be verified. ↩
3. On the legal nature of Basel standards as soft law, see Brummer (2015), chapters 2 and 3, and Zaring, "Informal Procedure, Hard and Soft, in International Administration" (2005) 5 Chicago Journal of International Law 547. To be verified. ↩
4. On the mechanisms that give effect to international financial standards, see Brummer (2015), chapter 4, and Singer, *Regulating Capital: Setting Standards for the International Financial System* (Cornell University Press, 2007). To be verified. ↩

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