

28 July 2010

## Feedback document to the CP 38

### Introduction

1. On 11 March 2010, the Committee of European Banking Supervisors (CEBS) submitted for public consultation its draft implementation guidelines regarding Article 106(2)(c) and (d) of Directive 2006/48/EC recast<sup>1</sup>.
2. The revised Capital Requirements Directive provides exemptions from the large exposures rules for certain short-term exposures arising from the provision of money transmission, correspondent banking, clearing and settlement and custody activities. The amendments have to be transposed into Member States' national law by 31 October 2010 and to be applied from 31 December 2010.
3. The consultation period ended on 6 May 2010. 7 responses were received; all of them have been published on the CEBS' website<sup>2</sup>.
4. Respondents generally supported CEBS's objectives and welcomed the opportunity to comment on the proposed implementation guidelines.
5. This paper presents a summary of the key points arising from the consultation and the changes made to address them. It also includes a feedback table which reflects CEBS's detailed views on the public responses.

### Part IV of the guidelines, Article 106(2)(c)

6. Some respondents wanted to know if intra-group transactions are covered by the exemptions provided by the guidelines.
7. Some comments mentioned that the criterion linked to the "same or higher quality" relating to diversified exposures is too restrictive.
8. One respondent asked for clarification whether paying agent services and transfer client services are within the scope of the exemptions provided by the guidelines.
9. One respondent asked for clarification whether intra-day exposures are also covered by the exemptions.
10. One respondent pointed out that it may sometimes need more time than the following business day to resolve an exposure. In the same vein, another respondent mentioned that, sometimes, it can take several days to resolve settlement problems.

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<sup>1</sup> CP38 is published under: <http://www.c-eps.org/Publications/Consultation-Papers/All-consultations/CP31-CP40/CP38.aspx>

<sup>2</sup> Under <http://www.c-eps.org/Publications/Consultation-Papers/All-consultations/CP31-CP40/CP38/Responses-to-CP38.aspx>

**CEBS's response:**

CEBS confirms that intra-group transactions are covered, an explicit clarification in the guidelines text is not deemed to be necessary.

CEBS has modified the treatment required for the credit quality of diversified exposures to specify that the credit institution with which the diversified exposures are placed shall have a credit assessment by an eligible External Credit Assessment Institution (ECAI) which has been determined by the competent authority to be associated with credit quality step 3 or above under the rules for the risk weighting of exposures to institutions under Articles 78 to 83 of the CRD (i.e. under the standardised approach for the calculation of minimum capital requirements for credit risk).

CEBS considers that paying agent services and transfer client services are already covered by the Directive text and therefore no further clarification is necessary.

As all exposures which do not last longer than the following business day and which fulfil the other conditions of the guidelines, intra-day exposures are covered.

CEBS would like to point out that its guidelines cannot go beyond what is allowed by the Directive text. Therefore, in cases where more than one business day is necessary to resolve an exposure, it would be necessary to report a large exposure to the supervisory authority and to explain the reasons.

**Part V of the guidelines, Article 106(2)(d)**

11. Some respondents requested clarification whether intra-group transactions are covered by the exemptions provided by the guidelines.

12. One respondent asked for clarification whether paying agent services and transfer client services are within the scope of the exemptions provided by the guidelines.

13. One respondent mentioned that the guidelines should make clear that the "total" exposure to a client or group of connected clients is meant.

14. One respondent pointed out that it can sometimes take several days to resolve settlement problems.

**CEBS's response:**

CEBS confirms that intra-group transactions are covered, an explicit clarification in the guidelines text is not deemed to be necessary.

CEBS considers that paying agent services and transfer client services are already covered by the Directive text and therefore no further clarification is necessary.

CEBS considers that the "total" exposure (meaning the exposure towards either a single client or towards a group of connected clients) is explicitly clear from the Directive text and that no further clarification is necessary.

CEBS would like to point out that its guidelines cannot go beyond what is allowed by the Directive text. Therefore, in cases where several days are necessary to solve a settlement problem, it would be necessary to report a large exposure to the supervisory authority and to explain the reasons.

**Feedback table on CP 38: summary of the public responses and suggested amendments**

CP38	Summary of comments received	CEBS response	Amendments <sup>3</sup>  N/R: change not required
<b>Part IV, Article 106(2)(c)</b>			
<p><b>Q1.</b> Is the definition of exempted exposures in relation to transaction type clear and do they cover all relevant exposures?</p>	<p>Some respondents pointed out that some “re-organisation” of paragraph 22 (criteria A. and B.) is necessary.</p>	<p>CEBS has restructured criteria A. and B.</p>	<p>Paragraph 19</p>
	<p>Some respondents requested clarification whether intra-group transactions are covered by the exemption.</p>	<p>CEBS confirms that intra-group transactions are covered, an explicit clarification in the guidelines text is not deemed to be necessary.</p>	<p>N/R</p>
	<p>Some respondents said that the scope of the provision is too narrow.</p>	<p>CEBS has amended the text to make clear that all exposures which are not under the control of the institution are exempted.</p>	<p>Paragraph 19 B. 1.</p>

<sup>3</sup> Paragraphs mentioned in column two of this feedback statement correspond to the paragraphs of CP 38. Paragraphs mentioned in column four of this feedback statement correspond to the paragraphs of the final version of the guidelines.

	Some respondents mentioned, that the criterion in paragraph 22 A. 3. (b). iii. (“same or higher credit quality”) is too restrictive.	CEBS has relaxed this treatment.	Paragraph 19 B. 2. (b). iii.
	One respondent asked for clarification that paying agent services and transfer client services are within the scope of the exemption.	CEBS considers that these services are already covered by the Directive text and therefore no further clarification is necessary.	N/R
<b>Q2.</b> Is the description of client activity sufficiently clear? Would practical problems related to the identification of client activity arise and, if so, how could they be solved?	One respondent proposed to include examples which are not client driven, another proposed that proprietary trading could be included as a negative example.	CEBS believes that the guidelines are sufficiently clear in this regard and therefore no further clarification is necessary.	N/R
<b>Q3.</b> Are the specifications regarding the available time for the reduction of the exempted exposures sufficiently clear?	One respondent asked for clarification whether intra-day exposures are covered by the exemption.	All exposures which do not last longer than the following business day and which fulfil the other conditions of the guidelines are covered.	N/R
	One respondent pointed out that it may sometimes need more time than the following business day to resolve an exposure. In the same vein, another respondent mentioned that, sometimes, it may take several days to resolve settlement problems.	CEBS would like to point out that its guidelines cannot go beyond what is allowed by the Directive text. Therefore, in such cases it would be necessary to report a large exposure to the supervisory authority and to explain the reasons.	N/R

<b>Part V, Article 106(2)(d)</b>			
<b>Q4.</b> Are the definitions of exempted exposures in relation to transaction type clear and do they cover all relevant exposures?	Some respondents requested clarification whether intra-group transactions are covered by the exemption.	CEBS confirms that intra-group transactions are covered, an explicit clarification in the guidelines text is not deemed to be necessary.	N/R
	One respondent asked for clarification that paying agent services and transfer client services are within the scope of the exemption.	CEBS considers that these services are already covered by the Directive text and therefore no further clarification is necessary.	N/R
<b>Q5.</b> Is the description of specific service providers sufficiently clear?	One respondent pointed out that the wording in that last sentence of 24.B. is probably not consistent with the second sentence of this paragraph.	CEBS has amended the last sentence.	Paragraph 22.B.
<b>Q6.</b> Are the specifications regarding the available time for the reduction of the exempted exposures sufficiently clear?	One respondent mentioned that the guidelines should make clear that the "total" exposure to a client or group of connected clients is meant.	CEBS considers that this is explicitly clear from the Directive text and no further clarification is necessary.	N/R
	One respondent pointed out that sometimes it may take several days to resolve settlement problems.	CEBS would like to point out that its guidelines cannot go beyond what is allowed by the Directive text. Therefore, in such cases it would be necessary to report a large exposure to the supervisory authority and to explain the reasons.	N/R