

5 August 2008

Feedback document

CEBS decided to modify its “Public Statement of Consultation Practices” in March 2007 and opened a public consultation process on 19 March 2007, asking for comments during three months. During this period of time, eight answers have been received on the content of the consultation, providing feedback on a number of aspects of the proposal. The aim of this document is summarize the comments received and their assessment by CEBS.

The annex of this document includes two templates, with a summary of the comments received, the analysis made of it and the action taken to address it if deemed necessary.

General comments

Respondents welcome the proposal as a sensible way of dealing with drafting and limited amendments to CEBS Guidelines, Standards and Recommendations. They also want to emphasize the support to the proposal to set as a general rule that new Guidelines and amendments to the existing ones will be subject to an impact assessment.

Other relevant aspects raised by the respondents are the following:

- Use of experts groups from the industry: some respondents asked to provide more role to EBIC in the designation of experts, as a number of comments questioned whether the Panel is representative enough to nominate the experts for all areas. Additionally, it was suggested to use informal channels of contacts with the industry before proceeding with the formal consultation.
- Typology of amendments: respondents support the procedure envisaged for typos and duplications, although some of them questioned whether obvious omissions shall be treated similarly, since it might imply changes in the content of the guidelines. Furthermore, some respondents criticised the proposal for limited amendment, and other asked for clarification in the terms “technical changes” and “précising or completing the existing guidelines”.

There were other comments related to the imposition of tight deadlines in previous consultation processes.

Specific comments

With regard to the specific comments received, CEBS has decided to accept and accommodate the following:

1. It will include a number of examples when defining the limited and drafting amendments. The inclusion of a closed list of exceptions might be too restrictive, so a number of examples can provide an understanding of the types of amendments CEBS is referring to.
2. The document clarifies that the contacts with the industry will be held at earlier stages of the process and especially before the start of the consultation period.
3. CEBS agreed with the proposal of the industry to avoid a new type of procedure when limited amendments became controversial issues. In such situation, it was decided to transform it in a standard process.
4. CEBS supports the idea of extending the time of consultation process in the limited amendments to the situations mentioned in paragraph 11, first bullet point.

Other aspects have not been addressed by CEBS. Among others, it was not considered as appropriate to include EBIC in the nomination of experts for each area, given that the Panel has a wide representation of different industry stakeholders. Additionally, CEBS considered that if an amendment has been considered by CEBS and the Panel as limited, the depth and intensity of the related impact assessment will necessarily be affected.

ANNEX: GENERAL AND SPECIFIC COMMENTS RECEIVED FROM RESPONDENTS

General comments

Topic	Received Comments	Analysis	Action
Simplification of the consultation procedures	Welcome the proposal, since it would be easier for CEBS to improve and update the Guidelines.	None	None
Impact assessment	Support to the proposal of use of the impact assessment methodology when developing or amending guidelines.	Clarify that the methodology to use would be the one subject to public consultation by 3L3 Committees	Include in PCPS, point 5, the following " <i>as approved by the 3L3 Committees</i> "
Modes of consultation	CEBS consider the holding of ad hoc roundtables with market practitioners and/or other informal mechanisms before the launch of a formal consultation.	Agreed, although it may not be needed in all situations.	Include in PCPS, point 7.vi) the following: "public hearings and roundtables (<i>e.g. prior to a public consultation when needed</i>)"
Industry experts	CEBS to consider whether the Consultative Panel is representative enough for the	CEBS have set up networks of industry experts in certain topics.	None

	discussion of each specific issue.	These experts may be appointed by, but not exclusively, by the Consultative Panel, so the Committee can incorporate other views from market experts.	
Timing of consultations	Imposition of tight deadlines on CEBS is an unsatisfactory aspect, apart from being unnecessary and inappropriate.	The imposition of external deadlines to CEBS consultations can't be avoided in certain procedures.	None
Terminology	References to banking industry are not correct, since they do not cover the investment firm activities.	Agreed.	Change accordingly the wording in the Annex when needed.
Drafting amendments	Procedure foreseen for correction of typos and duplications seems to be acceptable	None	None
Drafting amendments	Obvious omissions shall not be treated as drafting amendments, since it may imply changes in the content.	Obvious omissions do not modify the basic content of the guidelines. Otherwise, if the content of the Guidelines changes significantly, they would not be considered as drafting amendments.	Add in Annex, point 2. lit. ii) "for obvious omissions <i>that do not change substantially in practice the content of the Guidelines.</i> "
Limited amendments	Lack of adequate definition of "technical changes" or "précising or completing the existing guidelines", since very delicate or controversial issues can be subsumed under these concepts. It is suggested to elaborate more on these definitions.	Technical changes are amendments to guidelines based on changes in the underlying regulation or in current market practices (e.g., changes to the Guidelines on Financial Reporting templates due to changes in any IAS/IFRS) Précising or completing guidelines implies to clarify or detail any	Introduce some clarification on the wording in point 2 of the Annex.

		provision of the current guidelines to improve its understanding or to make it less ambiguous (e.g. changes in the templates for the supervisory disclosure guidelines).	
Consultative Panel role	The influence of the Consultative Panel in the categorisation of the amendment requires a stronger position of transparency in its work	The internal functioning of the Consultative Panel is transparent. Additionally, CEBS foresees in the Annex, point 8 that the views of the Panel about the categorization will be disclosed.	None
Consultative Panel role in the process	Provide the Panel with the possibility to initiate amendments to existing Guidelines.	Consultative panel role in CEBS structure is to be an advisory group; the preparation of the annual work program gives the opportunity to the Panel of providing orientations to CEBS future work.	None
Procedures for limited amendments	There is no need for further procedure.	Disagreed. The effect of evolving market practices and underlying regulations involve that guidelines may be outdated in few months. A need to have a quicker procedure for updating guidelines is necessary to avoid it.	None
Group of experts	Encourage the creation of expert groups from the industry in certain areas	The networks of industry experts are a proposal to be discussed in the coming future within the Panel and the Committee.	None

Specific comments

Reference	Received Comments	Analysis	Action
Point 7.(v)	EBIC to be included in the creation of the groups of experts in specific areas	CEBS consider that these groups of experts shall have participation as broader as possible.	None
Annex, paragraph 2	Set a close list of possible exceptions and cases within the definitions of limited and drafting amendments.	Although attractive in principle, the proposal may be too restrictive for the use of the procedures. A number of examples are included instead.	Include some examples in point 2 of the Annex.
Annex, paragraph 5.c)	Suggest that the contacts with the industry experts hold at earlier stages	Correct. Indeed the function of the experts groups would facilitate these contacts.	Include the wording " <i>(before the consultation process)</i> "
Annex, paragraph 5.c)	Uncertainty on the body that nominates the experts.	The experts are selected by CEBS, which may receive indication about them from the Consultative Panel.	None
Annex, paragraph 5.e)	Criticizes for the reduction in the carrying out of impact studies in the limited amendments	There is an internal logic to reduce it. Since CEBS and the Panel agreed on the categorisation and consequent reduction, the timing saved in the consultation would be otherwise spent in the impact assessment.	None
Annex, paragraph 5.e)	Introduce clarification in the paragraph to avoid the introduction of a new type of amendment	Correct. The aim was to allow CEBS review the project again if the proposal received several concerns	Include a reference to clarify that the paragraphs for the

		from a wide range of respondents. It is suggested to clarify that the procedure can be transformed into the standard one in such cases.	extension of consultation periods applicable for the standard procedure.
Annex, paragraphs 5.d) and 6.c)	Possibility to extend the consultation periods in the cases included for the standard procedure	Correct.	Include a reference to paragraph 11, first bullet point
	State explicitly that the standard procedure will be the default category.	Agreed. Indeed, current wording of point 1 of the Annex sets that as a general principle and point 2 suggested the limited and drafting amendments as exceptions.	None
Annex, paragraph 5.e)	Support for the call-back mechanism for limited consultations	Indeed, this paragraph includes a possibility to extend the consultation procedure.	None
Annex, paragraph 6.c)	Involvement of the Consultative Panel in the process of approving drafting amendments.	One of the functions of the Consultative Panel is to provide comments on the way in which CEBS is exercising its role and, in particular, the adequacy of the consultation with the market actors, consumers and end-users. Therefore, it seems logical to involve the Panel when reducing the timing of the consultations	None
Annex, paragraph 6.c)	Limit of two weeks for comment period for national authorities in drafting amendments may need to be reconsidered for a general	Two-week comment period are the usual period provided to CEBS for minor issues, as drafting	None

	extension to three weeks.	amendments.	
Annex, paragraph 8	Clarification of the meaning of limiting the changes to once per year.	The intention is to compile any potential changes to each Guideline, and if deemed necessary to amend it. This would provide industry and authorities with enough time to implement any change.	None
Annex, paragraph 8	Limiting the changes on an annual basis generates stability, although it also raises concerns on the availability of the Guidelines to be as responsive to changes as necessary, as well as creating increased pressure to deliver all the changes at the same time.	CEBS considers that there is a need to balance among the pressure to introduce changes due to market developments and the need for stability for supervisors and industry.	None