

19 July 2007

User Guide for the questionnaire on options and national discretions

1. In May 2007 the European Commission issued a Call for Technical Advice (No. 10) from CEBS on options and national discretions in the CRD.¹ CEBS is invited to conduct by May 2008 an in-depth technical analysis on the exercise of options and discretions identified in its supervisory disclosure framework by indicating for each of them:
 - a. The manner of exercise of the options and discretions available in Community legislation in each Member State pursuant to Art 144(b) of the Directive 2006/48/EC;
 - b. Whether CEBS deem it appropriate, with a view to achieving convergence of supervisory practice, to reach further harmonisation;
 - c. Where consensus may not be found on the deletion of an option or discretion or on the use of mutual recognition, the precise reason for this, including the views expressed by the majority and the minority of the Members;
 - d. Where appropriate, the corresponding drafting proposal.
2. In performing this work, the Call for Advice suggests a three-pronged approach by classifying the discretions and options into the following categories:
 - a. Options and discretions which might be subject to mutual recognition along the lines set out in the annex of the Call for Advice;
 - b. Possible legitimate options and discretions;
 - c. Discretions and options which should be deleted.
3. In developing the advice to the European Commission it will be crucial to obtain a broad insight into the positions of all stakeholders, i.e. industry and regulators. For this purpose a questionnaire has been posted on the CEBS website <http://www.c-eps.org/Advice/advice.htm>, to which all interested

¹ <http://www.c-eps.org/documents/CFA10onnationaldiscretions16052007.pdf>

parties are invited to answer. A similar questionnaire will be sent to all members and observers.

4. Questions 1 and 2 ask for general information regarding the respondent. Question 2 aims to collect information that might be of relevance for the subsequent interpretation of the responses.
5. Question 3 asks to decide for each of the options and national discretions identified in the CEBS' supervisory disclosure framework if it should be kept or removed². The respondents can choose from a number of proposals ranging from keeping the option/ND in its present form to its immediate and complete removal from the CRD. The respondents also have the option to indicate that they have no specific preference, in particular, because the respective option/ND has no relevance for them. Respondents wishing to keep the option/ND are asked to indicate whether it should be kept in its present form or amended in one of ways listed. Mutual recognition in this context means the recognition of host rules by the home supervisor on a consolidated level and/or solo level or the recognition of home rules by the host supervisor on solo level.
6. Respondents wishing to remove the option/ND are asked to indicate whether it should be abolished completely (either immediately or after a transition period) or whether it should be transformed into a general rule without discretion.
7. Furthermore, the respondents are invited to explain their classification of options and discretions. For instance, whenever a respondent answers that he would prefer to keep a specific discretion CEBS is keen to know if that is due to market specificities, to business reasons, to cross-border related aspects, etc. CEBS is also seeking to find out what would be the potential impact for the respondent of the deletion of that specific discretion. Every time a respondent answers that he would prefer to delete a discretion CEBS would like to know the underlying reasons for that and also if the deletion has any potential impact on the respondent's business. (Question 4)
8. Respondents are also invited to indicate on a scale of 1 (very important) to 5 (not relevant for respondent) how important/relevant the individual options and national discretions are for them, i.e. respondents are asked to highlight a number of options and discretions that they would like particularly to be kept or deleted. Furthermore comprehensive information on the respondents' reasoning with respect to their prioritization of options and discretions is welcome. (Question 5)
9. As disclosed in the CEBS' supervisory disclosure framework the exercise of the options and discretions by national authorities is not yet convergent across the Member States. This situation can have an impact for example on banks with cross-border business. CEBS is keen to find out to what extent

² http://www.c-ebs.org/sd/options_national_discretions.htm

such an impact is perceived and in which of the options and discretions it is materially relevant (Question 6).

10. Lastly, the respondents are invited to put forward their views on possible solutions to ensure the convergent exercise of options and discretions across the Member States. For example, should mutual recognition be envisaged as a possible solution, or do respondents agree that it will make options and discretions more embedded in the legislation? Could options and discretions have an expiration date, i.e. made transitional?, etc. (Question 7)
11. Respondents are requested to return the completed questionnaire to nd@cebs.org **by 19 October 2007**. Please note that unless requested otherwise responses received will be published on the CEBS website.