

Brussels, 03 December 2007

Mrs. Danièle Nouy
Chairman
Committee of European Banking Supervisors
Tower 42
25 Old Broad Street
UK - London EC2N 1HQ
daniele.nouy@banque-france.fr
nd@cebs-org

cc.: Mr. Patrick Pearson
European Commission
Head of Unit H.1 – Banking and financial conglomerates
Avenue de Cortenberg
B-1000 Brussels
Patrick.Pearson@ec.europa.eu

Subject: Removal of national discretions in the CRD

Dear Mrs Nouy,

The European Banking Federation (EBF)¹ has long called for a removal of the national discretions included in the Capital Requirements Directive (CRD). In 2005, we already sent a first proposal to CEBS in response to CEBS' advice to the European Commission, which had been disappointing from our point of view.

We therefore strongly welcome that there is at this stage a renewed effort to achieve important level playing field adjustments, as well as to reduce the implementation burden on cross-border active institutions and achieve greater comparability of the CoRep figures. We reiterate our conviction **that in principle, in view of the objective of a single market all national discretions should be removed.**

However, given that these discretions are now hard-coded into law we recognise that there are different ways of dealing with them. We would like to thank CEBS for taking the EBF's views into account in drawing up the current questionnaire, and we believe that the categories suggested by CEBS are the right ones to achieve as much as possible analytical clarity.

¹ The European Banking Federation (EBF) is the voice of the European banking sector representing the vast majority of investment business carried out in Europe. It represents the interests of over 5,000 European banks, large and small, from 29 national banking associations, with assets of more than €20,000 billion and over 2.3 million employees.

We would furthermore **like to underline that the timing of this exercise is difficult also for the industry**, as banks have just gone through the exhausting and costly exercise of implementing the CRD and are now faced with the likely situation that they will have to revise this implementation in quite an extensive way in a relatively short timeframe after the initial implementation. **However, this fact has not changed our strong underlying view that a single market has to be achieved, to which the divergences in the application of the CRD imply one of the most fundamental obstacles.**

In this context, we would also like to apologise for the delay in responding to CEBS' consultation. Indeed, given our commitment to this exercise our members have insisted on ensuring the highest possible degree of consistency and clarity in our response, even though this meant many rounds of consideration of the long list of current Member States options, and in spite of our recognition that more discussion on specific parts of the list will follow. Indeed, we have noted that some national options were missing in CEBS' list and have added them for the list to now be hopefully complete.

Notwithstanding our striving for clarity, experience has shown that there is still some scope for misunderstandings. We have therefore added some comments in the sub-categories 'to keep' and 'to remove' under CEBS' Section 3 of the questionnaire that aim to further clarify the meaning of each recommendation.

By way of overview, we understand **the categories to mean the following respectively to be applicable to the following cases:**

- **To keep – a) in present form: we do not make this recommendation**, as we believe all discretions should be removed from the Directive. For the sake of clarity, we have classified transitional options that we would recommend to let expire after the foreseen period under bb) in the second column.
- **To keep – b) for supervisors to decide on a case-by-case basis: again, we do not make this recommendation.** Whilst we recognise that there are a number of cases where supervisory scrutiny is needed, we underline that these decisions should be based on a number of clear criteria. Rather than taking a possibly arbitrary decision on whether to grant banks a particular treatment, the role of the supervisor should in our view be to check that the applicable criteria are fulfilled – i.e., such cases should be understood as general rules.
- **To keep – c) subject to mutual recognition or to a joint recognition process: we recommend this option where there is a need for supervisory scrutiny**, such as under the previous option b). However, different applications of these provisions by different supervisors lead to inconsistencies of supervision, competitive distortions, and potential duplication of work. Where it makes sense, such decisions should therefore be taken in a joint process between the concerned authorities. We would in particular recommend a joint process where several supervisors are equally concerned, for example in the case of ECAI recognition or for the recognition of third-country ratings.

- However, a joint decision is not always practical, and the decision will in some cases have to be exclusively taken by a single authority. For example in the case of recognition of collateral, this should be the supervisor of the country where the collateral is located, even though the underlying criteria to be fulfilled by the collateral have to be the same for all Member States. When collateral has been recognised as eligible, it should automatically be accepted by the other EU and EFTA supervisors. To give a second example, in the case of preferential risk weights for certain institutions or types of institutions, such as public sector entities, the decision should exclusively lie in the competence of the country where these borrower entities are located.
- **To keep – d) as option for credit institutions: the EBF has strived to also limit recommendations for options given to credit institutions as much as possible.** Although these divergences do not contribute to the competitive distortions within Europe, they impact negatively on the objective of a single market and on e.g. the comparability of CoRep figures. However, in a number of instances such choices are unavoidable. In these cases, institutions should be assumed to implement the choice consistently and might be questioned about the implementation by their supervisor as part of the general Supervisory Review and Evaluation Process.
- **To remove – a) remove completely from the CRD:** this recommendation suggests that the relevant provision should be entirely removed from the CRD. In some more complex or particularly significant cases, a transition period might be needed. As mentioned above, options that are foreseen to expire after a certain period are also subsumed under this category for the sake of clarity.
- **To remove – b) transform into general rule and remove the other option:** this recommendation suggests that one of several options be maintained as a compulsory rule for all credit institutions. In some more complex or particularly significant cases, a transition period might be needed.

To provide additional clarity, we make for most cases suggestions for new CRD wordings in CEBS' Column 7. There are furthermore some cases that were already debated during 2005, and solutions were suggested by either CEBS itself or the Ecofin. We recall these compromise solutions in CEBS' Column 7.

The EBF has chosen not to prioritise its recommendations, nor to estimate the practical impact each discretion as both aspects vary from firm to firm. Indeed, we reiterate that **in light of the objective of a single market the national options should be removed as a matter of principle. Furthermore, it is to some extent the sheer number of divergences that creates an enormous burden in the implementation and maintenance of firms' systems**, whilst the impact of some of the divergences might be small from a risk management point of view.

Finally, we recognise that the process of revising established practices is difficult in some cases, but underline again that the situation is the same for our members. We are moreover convinced that an alignment of the rules across Europe would not only benefit the industry, but would also facilitate supervisors' work and supervisory cooperation. In this, we would also point again to the example of CoRep and reiterate our expectation that a real common European reporting format be agreed in the near future.

We genuinely hope that this piece of work will be an important contribution to a level playing field in Europe. At the same time, it is however our experience that **the practical divergences between supervisors are often as burdensome as the written rules. In parallel to reducing the legal divergences, we therefore renew our call on CEBS' members to enhance their efforts to agree on common interpretations and standards in the every-day practices of supervision.**

We hope that these remarks and our recommendations will be well appreciated and are looking forward to a direct discussion with you on the national options as well as on questions of general supervisory convergence.

Yours sincerely,



Guido Ravoet

Encl.: 1