



EUROPEAN COMMISSION
Internal Market and Services DG

Director-General

Brussels, 27.04.07 1662
H1/JH/JD/ek D/5840 (2007)

Danièle Nouy
Chair, CEBS
Tower 42
25 Old Broad Street
UK-London EC2N 1HQ

Dear Ms Nouy,

**Subject: Call for Technical Advice (No. 10) to CEBS on options and
discretions in the Capital Requirements Directive**

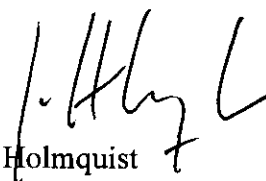
I am pleased to send to you the Commission's tenth official call for technical advice from the Committee of European Banking Supervisors.

As you know, the Banking Advisory Committee agreed that 2008 will be the appropriate timing to consider the extent to which further harmonisation might be achieved in terms of reducing the number of discretions and options of the Capital Requirements Directive.

I would be grateful if CEBS could carry out this technical analysis to prepare advice to support the work of the Commission services and the European Banking Committee by end May 2008.

I am attaching to this letter a copy of our Call for Technical Advice.

Yours sincerely,

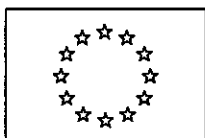

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EUROPEAN COMMISSION
Internal Market and Services DG

FINANCIAL INSTITUTIONS
Banking and financial conglomerates

Brussels, 20 April 2007

CALL FOR TECHNICAL ADVICE (No.10) FROM THE COMMITTEE OF EUROPEAN BANKING SUPERVISORS (CEBS)

Options and discretions in the Capital Requirements Directive

1. Background

1. As part of the negotiations on the Capital Requirements Directive in 2004, CEBS was requested to provide a full list of national discretions with a view to reducing the number of national discretions, and to come up with a specific drafting proposal. 23 national discretions were removed.
2. At its March 2007 meeting, the European Banking Committee has come to the conclusion that 2008 will be the appropriate timing to carefully consider the extent to which further harmonisation might be achieved in terms of reducing the number of national discretions of the Capital Requirements Directive (2006/48/EC and 2006/49/EC).
3. This might result in modifying Annexes to 2006/48/EC by Comitology in accordance with Article 150 (1) (lit. 1), or suggesting legislative amendments, where appropriate.

2. Specific Call for Technical Advice

a) Scope

4. CEBS is asked to carry out technical analysis to support the work of the Commission services and the European Banking Committee in securing agreement on the possible and desirable modification of 2006/48/EC and 2006/49/EC by indicating for each of the option and discretions identified by CEBS's supervisory disclosure framework:
 - i) The manner of exercise of the options and discretions available in Community legislation in each Member State pursuant to Article 144 (b) of 2006/48/EC;
 - ii) Whether CEBS deem it appropriate, with a view to achieving convergence of supervisory practice, to reach further harmonisation;
 - iii) 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;
 - iv) Where appropriate, the corresponding drafting proposal.

5. In performing this work, it is suggested that CEBS follows a three-pronged approach by classifying all options and discretions into the following categories:
 - i) Options and discretions which might be subject to mutual recognition along the lines set out in Annex
 - ii) Possible legitimate options and discretions;
 - iii) Discretions and options which should be deleted.
6. With respect to point (i), the European Banking Committee has agreed that mutual recognition of national discretions should not be seen as an optimum or definitive solution. This might result in embedding national discretions in Community legislation and might, in certain circumstances, lead to regulatory arbitrage. For all options and discretions falling within this category, it is suggested that CEBS produces a technical analysis of this risk, and where appropriate proposes a specific timeframe for using mutual recognition pending further harmonisation.
7. Ongoing consultation with industry should play a key role in providing an insight into the above-mentioned ways forward for dealing with the reduction of national discretions.

b) Timetable

8. The Commission services would welcome the receipt of this technical advice by end May 2008 to plan further work in the course of 2008.

Annex

Principles for mutual recognition

- a) Mutual recognition should cover national discretions justified because of local economic or institutional conditions¹. Otherwise, applying host treatment at the home level would result in cementing national discretions in banking legislation;
- b) When not explicitly stated in the CRD, mutual recognition may apply when national discretion is rooted in local economic or institutional conditions. Applying mutual recognition should not incentivise firms to cherry-pick favourable regulatory treatments (e.g., depending on the booking of the operation);
- c) In the context of Article 129 (including permanent partial use), the agreed decision can apply any blend of home/host discretions (i.e. recognition of Home rules by Host supervisors, or recognition of Host rules by Home supervisors);
- d) When applied, mutual recognition allows credit institutions to apply the host treatment for exposures directly held by the credit institution (branch or free provision of services) or by subsidiaries; and
- e) Unless otherwise specified in the CRD, 'mutual recognition' among EU supervisors is optional, although CEBS is strongly encouraged to reach consensus on national discretions rooted in local considerations subject to mutual recognition.

¹ An example of an 'institutional condition' would be the structure of institutions in a Member State, such as local and regional authorities. Accounting treatment, company law, supervisory philosophy, and so on, do not fall into this category.