



CEBS/04/62
15 September 2004

NATIONAL DISCRETIONS EXERCISE

In her letter of 30 July, the Chair of the Council Working Group on the Capital Requirements Directive invited the Chair of CEBS to submit a first outcome of the CEBS national discretions exercise by 15 September.

The attached main spreadsheet contains a list of all the options identified and discussed by the CEBS Expert Group on the Capital Requirements Directive and reflects the debate held at the technical level on the possibility of reducing their number and scope in the final Directive text. This work has been conducted within a tight time frame and is intended to support a focused discussion within the Council Working Group.

1. The CEBS Expert Group has identified and discussed 143 options.
2. 41 of these options are options granted to credit institutions rather than national discretions available to the competent authorities. Such options generally reflect the flexibility needed by the credit institutions to assess their risks and the related capital adequacy. They are mostly concerned with the measurement of operational risk and securitisation. These options provide credit institutions with a choice as to whether or not to put in place the systems or other administrative changes required for the credit institution to benefit from a lower capital requirement. The options granted to credit institutions are not national discretions available to the competent authorities and should therefore remain outside the present effort for further harmonisation.
3. The Expert Group recommends that 23 national discretions should be removed. These are listed on a separate spreadsheet, together with specific drafting proposals. These recommendations reflect either an agreement that the competent authorities will adopt a common approach or a recognition that there is no need for a national discretion where the treatment of an exposure depends on a sufficiently clear set of criteria. Of these recommendations, six have already been deleted from the MARKET 1050/04 text, in response to earlier submissions from CEBS to the BAC. All but two of these recommendations reflect a unanimous view of the Expert Group.

4. Of the remaining national discretions available to the competent authorities many need to be retained, at least for the time being, for solid technical reasons. Some reflect the diversity of domestic markets, for example the 12 discretions relating to mortgage lending. Others reflect the need to retain flexibility in the implementation of the Directive, for example 14 of the national discretions relating to the IRB and AMA approaches and to securitisation. Another 5 discretions are required for only a specified transitional period, while a further 4 discretions relate to the carrying over of provisions from the Directive on Large Exposures and so need to be reconsidered if and when that Directive is revisited. Finally, in a number of cases, regulatory practices and treatments have not yet converged sufficiently to allow the removal of these discretions in the immediate future.
5. CEBS will continue its work on supervisory convergence, which will narrow the extent to which these remaining national discretions – including those relating to flexibility in implementation - are applied differently in practice by the competent authorities. As a result of this continuing work by CEBS it should also be possible to remove several national discretions at a later time when sufficient convergence has been achieved and/or national markets (e.g. on mortgage lending) have further integrated. Within the Lamfalussy system, CEBS will advise to amend the Annexes accordingly as soon as such possibilities arise (by way of reference, 116 out of 143 discussed options are contained in the Annexes).