17 October 2008

Feedback statement on CEBS's consultation paper (CP18) on the technical advice to the European Commission on options and national discretions

Background

1. On 22 May 2008 the Committee of European Banking Supervisors (CEBS) submitted for public consultation its proposals on options and national discretions in the Capital Requirements Directive[1] as part of developing its response to the European Commission's Call for Technical Advice No 10.

2. The consultation period ended on 15 August 2008. 20 responses were received, mostly from trade associations, 18 of which are published on the CEBS website.[2] Most respondents focused their responses on the national discretions particularly relevant to them.

3. This paper presents a summary of the key points arising from the consultation and the changes made in the Advice in order to address them. It also includes a feedback table which reflects CEBS's detailed views on the public responses – the table should be read in connection with CEBS's advice to the European Commission, which is available on the website.[3]

General comments

4. Respondents broadly agreed that the proposals outlined in CP 18 represent steps in the right direction. However, two respondents considered that CEBS should have gone even further in reducing the number of options and national discretions.

5. The involvement of the industry at an early stage of CEBS's work was greatly appreciated by respondents.

6. The reduction in the number of options and national discretions in the CRD was welcomed as a way of creating more supervisory convergence in the EU,

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[1] The CEBS's consultation paper (CP18) is published on CEBS public website under: http://www.c-ebs.org/formupload/09/09b21b4b-cca2-4885-964a-2a1e6db3df78.pdf

[2] The public responses to CP18 are published on CEBS public website under: http://www.c-ebs.org/getdoc/d2d67619-40ac-44b4-9dfa-c3cb94594f05/Responses-to-CP08.aspx

[3] CEBS's advice to the European Commission is published on CEBS public website under: http://www.c-ebs.org/getdoc/354c6e4c-f22a-46a0-9025-0c55f460a5a6/2008-17-10-Final-Advice-on-options-and-national-di.aspx

of ensuring a consistent approach to Pillars 2 and 3, and of reducing distortions to competition and the administrative burden.

7. Some respondents supported CEBS's view that there are cases where the existence of local market conditions or legislative specificities justifies the adoption of different approaches so that certain options and national discretions should be maintained. However, one respondent questioned the argument of 'local market conditions' when set against the EU's objective of achieving a single market in financial services.

8. Two respondents criticised some of the arguments used by CEBS to justify not putting forward any specific proposals with respect to some national discretions. For instance, the general argument that a national discretion can be changed only as part of the future overhaul of a certain subject was judged to be problematic. In addition, the mere lack of practical experience should not hinder endeavours to find constructive solutions for options and discretions whose application gives rise to major distortions.

9. Two respondents considered that in the discussions up to this stage the requirements that solutions should be 'risk sensitive' and 'proportionate' has been proven to be of little practical value. The industry understands 'risk sensitive' solutions to mean that the prudential provisions are closely aligned with the risks as assessed on the basis of their internal methods and practical experience. As opposed to this, risk sensitivity in the supervisors' reasoning often seems to correspond to a more conservative approach. Similarly, there is general agreement that supervision must be proportionate, although the precise implications of this in each case are not clear.

CEBS's response: Although the necessity for further harmonisation of certain areas of the Directive is acknowledged, CEBS confirms its conviction that certain national discretions can only be changed in the context of a full review (e.g. of the definition of capital). CEBS does not want to pre-empt current discussions at the BCBS and EU-level.

Glossary and high level considerations

10. The Glossary and its consistent use throughout the paper was strongly welcomed. Similarly, the high level considerations were judged to be particularly important for ensuring a coherent approach. However, some respondents pointed out that CEBS has chosen to rely mainly on a pragmatic case-by-case approach in its proposals, which, while delivering practical solutions that constitute real improvements, nevertheless fell short of addressing some important inconsistencies.

Market specificities and mutual recognition clauses

11. One respondent highlighted that during the negotiations of the CRD investment firms obtained specific provisions in certain areas to take into account the specificity of their activities and therefore strongly supports the proposals to keep these options and national discretions.

12. One respondent explicitly pointed out that it is fundamental to preserve the principle of proportionality and some degree of flexibility when considering any amendments to the CRD framework. It highlighted that the own funds regime which is currently under review, should be proportionally applied to the different types of firms subject to the CRD.

13. One respondent particularly welcomed CEBS's proposals for real estate leasing transactions, where it is proposed to keep the national discretions in their current form, or in certain cases with the introduction of mutual recognition clauses, as this would take into account market situations and national specificities, as well as the development of financing techniques.

14. Two respondents highlighted that where national discretions are justified because they address local market conditions, mutual recognition should always be binding (i.e. the decision of one national competent authority must be applied all competent authorities to loans granted in that market by banks from other Member States). This is the only way to avoid competitive distortion. When there is an information gap between competent authorities, which CEBS cites as an argument for non-binding mutual recognition, this should be bridged by greater cooperation and communication between supervisors in the context of supervisory disclosure.

CEBS's response: In each case where CEBS proposed the introduction of a mutual recognition clause (or keeping a current one), it examined the possibility of making the requirement binding. In cases where the exercise of a national discretion is based on local market conditions, or where there was no other need to take into account facts or circumstances possibly known only to the supervisor taking the decision, a binding mutual recognition clause was proposed. However, in some cases a binding mutual recognition clause was not an option - as in the case of the joint assessment process (see below) or where the exercise of a discretion (which is to be mutually recognised) would also need to take account of additional information available to the supervisor taking the decision, or would need to consider the relevant national legal framework.

Supervisory decision

15. One respondent agreed that there are cases of supervisory decisions, rather than national discretions, which are part of the supervisory approval process, e.g. in the IRB approval process. However, not all of the 'case-by-case' decisions that CEBS identified were considered to be such. It was stressed that the exercise should not be used to create a new level of discretion that would be completely opaque to the industry. Furthermore, where decisions are part of the general approval process it was underlined that it must be clear that there is "no separate decision". This should be combined with disclosure in the supervisory disclosure (SD) framework on how supervisors take their decisions in general.

16. A number of respondents highlighted that the solution to "keep as or transform into a supervisory decision" a national discretion is not sufficiently clear because of the reference to a supplementary subjective choice by the supervisor. It was stressed that in cases where there are objective criteria the

discretion should be made available to all European banks which fulfil them. The discretion of the supervisory authority should be limited to the assessment of the fulfilment of these criteria. Where no such objective criteria can be identified, CEBS should focus on determining how national authorities should collaborate to establish a common understanding.

17. A number of respondents welcomed the application of supervisory decisions and the mutual recognition of certain options as they are also seen to be of particular importance in cases of market specificities. Such an open perspective helps to avoid any impression among banks operating at a national level that the exercise is conducted for the exclusive benefit of international banks. However, one respondent believed that transforming current options into supervisory decisions is not a move in the right direction.

CEBS's response: All supervisory decisions have to be based on the requirements of the Directive and the legal framework of the respective Member State. For those national discretions where the criteria given are considered to be objective and sufficiently specific, the drafting proposals have been amended to clarify that the supervisor can exercise judgement as to whether the criteria are met, but, if so, it has no discretion to deny the specified treatment.

Joint assessment process

18. Various respondents welcomed the inclusion of "joint assessment processes" as a possible solution in relation to some NDs, as it involves strengthened cooperation and coordination among national supervisory authorities and will contribute to the convergence of supervisory practices. In addition, the joint assessments would make the assessment process considerably less burdensome for both European banks and national supervisors. A number of respondents would favour an explicit mention of the requirement that such processes should strive for the adoption of joint decisions.

19. Furthermore, it was suggested that in addition to the CEBS's proposals, joint assessment processes could also be used in other areas (e.g. in the case of the categorisation of central counterparties whose transactions are fully collateralised on a daily basis- see Annex III, Part 1, point 2 in conjunction with Article 78 Para. 4 of Directive 2006/48/EC). If the eligibility of entities as central counterparties were examined in a uniform manner throughout the EU along the lines of the procedure for recognising ECAIs, this would bring about further convergence of supervisory practices.

20. A proposal was also made to introduce joint assessment processes for the determination of whether third countries have supervisory regimes which are substantially equivalent to the arrangements in the CRD and whether regional governments and local authorities in these countries are treated by their supervisors in the same manner as central governments (e.g. Annex VI, Part 1, point 11 of Directive 2006/48/EC).

CEBS's response: The industry's proposal to go one step further and oblige supervisors to reach a consensus which would subsequently be binding on all of them cannot be supported by CEBS. This would result in a fundamental

change to the existing allocation of tasks between CEBS and national supervisors and more generally to the current supervisory framework. Such a change falls outside the mandate given by the European Commission and cannot thus be recommended by CEBS. CEBS nevertheless draws attention to the fact that there have been positive experiences in the past with the joint ECAI recognition processes, which suggest that the established process – without need for the suggested change – could only impact the level of harmonisation in a positive manner.

Furthermore, with regard to the request to introduce joint assessment processes in other areas of the Directive, CEBS would in general support such attempts (if the other areas are indeed similar). However, this request falls outside the scope of the current national discretion exercise.

Transitional provisions

21. A number of respondents agreed in principle that it is a pragmatic position to let those provisions which were meant to be only temporary expire. There are however a few cases (e.g. provisions that were meant to help with the introduction of the advanced approaches) where they believe that current options are of permanent significance and should be reviewed before their expiration or even be retained as general rules.

22. It was suggested that these cases should be reviewed with the aim of transforming them into general rules, where the supervisory authority confirms compliance with applicable conditions.

CEBS's response: Most transitional provisions were inserted in the Directive at a very late state of the negotiations, with the arguments supporting them not being strong enough to justify turning them into permanent national discretions. CEBS is reluctant to reopen the negotiations regarding the transitional provisions and advocates letting them expire. Furthermore, introducing additional review clauses is outside the scope of the national discretion exercise.

Impact assessment

23. One respondent welcomed the regular reference by CEBS to the results of the impact assessment, but pointed out that such an exercise should be underpinned by systematic scrutiny of potential impacts and thorough cost-benefit analysis.

24. Two respondents pointed out that the impact assessment should not be limited to the supervisors' general prudential concerns but should also take into consideration the overall impact on the industry as regards e.g. Pillars 2 and 3. In particular, the direct costs to the industry should be taken into account.

CEBS's response: Impact assessments are seen as important instruments that help policy makers describe and explain the decision making process and assist them in identifying policies that should/could be implemented. CEBS adopted a 'fit for purpose' approach to the Impact Assessment. Given time

constraints and the scale of the exercise, this meant focusing on a qualitative high level analysis for each of the 152 requirements under review, which was based, amongst other things, on industry input. Furthermore, Impact Assessment advice was sought from national experts outside the expert group. Also, various panels of stakeholder groups that assist CEBS, drawn from both competent authorities and industry experts, were invited to comment on CEBS's proposals during the assessment process. CEBS would have appreciated receiving detailed information on the direct costs to the industry. The direct costs known to CEBS as the result of its own experience and from the ongoing discussions with the industry were taken into account in the assessment, to the same extent as the concerns arising from a prudential point of view.

Way forward

25. One respondent expected the Commission to include changes relating to the annexes in the Directives in the comitology process as soon as possible when all stakeholders were in clear agreement with CEBS

26. One respondent would welcome some indications of the timing for making the envisaged changes, whilst recognising that it is the responsibility of the Commission to set the timetable for amendments to the CRD. CEBS could include its own general views on timing in its advice to the Commission, with the exception of those discretions where it recommends a transition period.

CEBS's response: The final CEBS advice will be sent to the Commission in October. CEBS would support any plans of the Commission to incorporate the suggested improvements into the CRD as quickly as possible, including where possible through a comitology process. The final timeline will need to be decided by the Commission.

Annex

Feedback table on CP18: analysis of the public responses and suggested amendments

CP18	Summary of comments received	CEBS's response	Amendments to the proposals set out in CP18
Area: Own funds			
1. Article 57 (Directive 2006/48/EC)	Most respondents agree with CEBS's argumentation and proposal; two particularly agree with CEBS's recognition that there is no justification for a separate choice by the supervisor, as the applicable criteria are sufficiently clearly defined. One respondent would like to delete the discretionary part of the provision, transforming it into a mandatory provision.	CEBS welcomes the broad support for its proposal.	No change.
2. Article 58 (Directive 2006/48/EC)	The great majority of respondents would prefer transforming it into a general rule; two of them agree that this provision will only apply in a limited number of cases. However, this is a case where the applicable criteria are sufficiently clear for supervisors to confirm that they are fulfilled. When it is acknowledged that they are, it should not entail a separate supervisory judgement.	In CEBS's view this is a supervisory decision that should be applied on a case-by-case basis and that depends on supervisory judgment. Irrespective of whether the criteria are objective, CEBS believes that the decision to apply a waiver should remain a decision for the supervisors.	No change.
3. Article 59 (Directive 2006/48/EC)	One respondent believes CEBS's proposal can delay the decision making process. Most respondents agree that alignment between the Financial	CEBS believes that the prudent approach to the choice of methods is to transform this national discretion into a	See Advice (change in the drafting proposal).

	Conglomerates Directive (FCD) and the CRD is desirable. However, they find the wording in the FCD unfortunate and are therefore not convinced that it should be copied. The phrase that 'Member States shall allow their authorities' is redundant if the intention is to give the supervisory authorities the choice between methods 1, 2 and 3 in Annex I. In general respondents believe the choice between the three methods should be given directly to institutions in order to reflect their organisational structure. In line with their preference one of them suggested the following wording: *"As an alternative to the deduction of the items referred to in points (o) and (p) of Article 57, Member States shall allow ~~their competent authorities, where they assume the role of consolidating supervisor with regard to a particular banking group, to decide, after consultation with the other relevant competent authorities and the~~ banking groups ~~itself,~~ to apply mutatis mutandis methods 1, 2 or 3 of Annex I to Directive 2002/87/EC. Method 1 (accounting consolidation) may be applied only if the competent authority is confident about […]"*.	supervisory decision (governing the use of any of the three methods); the use of method 1 remaining dependent on the competent authority being "confident about the level of integrated management and internal control (…)". In CEBS's view this proposal would allow supervisors to liaise with each other and coordinate their approaches in order to reduce the burden on the industry. Although CEBS is in favour of harmonizing the provisions in the CRD and FCD, it has carefully considered the feedback received on the FCD provision. It has changed the drafting proposal to address some of the concerns of the respondents.	
4. Article 60 (Directive 2006/48/EC)	Two respondents would prefer to delete the discretionary part of the provision, transforming it into a mandatory provision. Two respondents believe the only consistent approach would be to make this an option for institutions. They disagree with CEBS's proposal to simply defer a decision, in particular in view of the significance of the provisions on own funds, which does not in their view allow time to await the outcome of the review of the definition of own funds. The application of this provision must follow the specific structure of each institution, which is the sole responsibility of the institution.	CEBS confirms its conviction that national discretions related to the definition of capital can only be changed in the context of a full review of the subject. CEBS does not want to pre-empt current discussions at the BCBS and EU-level.	No change.
5. Articles 61, 63.1, 64.3 and	Two respondents would prefer transforming it into a general rule. A common definition of own funds is highly welcomed. A	CEBS confirms its conviction that national discretions related	No change.

65 (Directive 2006/48/EC)	general definition, not only concerning hybrids, is essential especially for cross border credit institutions. Two respondents said that CEBS points out rightly the significance of these provisions. The industry's conclusions are however opposed to those of CEBS. Institutions should have the choice between the different options, to be applied consistently throughout the group. The implications from divergent treatment are too important to maintain such inconsistency, particularly with regard to the consolidation exercise for cross-border institutions.	to the definition capital can only be changed in the context of a full review of the subject. CEBS does not want to pre-empt current discussions at the BCBS- and EU-level.	
6. Article 13.2 (Directive 2006/49/EC)	Two respondents agree with CEBS's proposal. Two respondents think that institutions should have the choice between the different options, to be applied consistently throughout the group. The implications for divergent choices in line with this provision are too significant for the industry to maintain them. One respondent would like to remove the provision from the CRD.	CEBS confirms its conviction that national discretions related to the definition of capital can only be changed in the context of a full review of the subject. CEBS does not want to pre-empt current discussions at the BCBS- and EU-level.	No change.
7. Article 13.5 (Directive 2006/49/EC)	Most respondents agree with CEBS's proposal.	CEBS welcomes the support for its proposal.	No change.
8. Article 14 (Directive 2006/49/EC); 14(1) for investment firms, 14 (2) for credit institutions	One respondent agrees with CEBS's proposal until the revision of the own funds regime. Another one would prefer transforming it into an option for institutions. While two other respondents concur that the CRD gives the choice to the supervisory authority, rather than to Member States, they believe that CEBS should adopt a different and less discretionary understanding of 'supervisory decisions'. The industry previously proposed an option for institutions in	CEBS believes that its proposal to implement the provision as a supervisory decision goes in the right direction without pre-empting the current discussions on the definition of capital.	No change.

	recognition of managers' responsibilities for the soundness of their firms, which are reviewed, and challenged if necessary, by supervisors in the general Supervisory Review and Evaluation Process included in the Basel Framework under Pillar 2. CEBS should propose that this provision be turned into an option for institutions, which will be subject to supervisory review in the same way as institutions' overall business models and other important policy decisions taken by institutions.		
Area: Scope of application			
9. Article 69.1 (Directive 2006/48/EC)	One respondent agrees with CEBS's proposal. Banking supervision should mirror firms' internal structures. Where the criteria set out in Article 69 are met, the CRD rules should be applied at the highest level of the group. Another one would prefer transforming it into a general rule. While another respondent is aware that the issues around this Article are linked to the general, difficult discussion on the right supervisory structures. However, the respondent strongly disagrees with CEBS's assessment that the impact of the discretion is 'immaterial'. Indeed, the current situation unduly penalises parent institutions with a larger number of subsidiaries outside the home jurisdiction, as opposed to those institutions whose subsidiaries are established in the same jurisdiction as the parent entity. The respondent would have sympathy for a conclusion that underlines in this specific case the fact that a political discussion is ongoing in parallel, and which CEBS is not able to solve in the context of the national discretions. On the other hand, it cannot endorse CEBS's current argumentation and proposal. The respondent continues to be of the view that within the EU's 'single market', all three Pillars of the CRD should be applied at the consolidated level. This discretion should therefore be turned into a general rule and it urges CEBS to ensure that the	CEBS confirms its conviction that this is one of the national discretions related to the scope of application that can only be changed in the context of a full review of the subject.	No change.

	discussion is continued both amongst CEBS's members and with the involvement of the European Commission.		
10. Article 69.3 (Directive 2006/48/EC)	One respondent would prefer transforming it into a general rule. Another respondent is aware that the issues around this Article are linked to the general, difficult discussion on the right supervisory structures. However, the respondent strongly disagrees with CEBS's assessment that the impact of the discretion is 'immaterial'. Indeed, the current situation unduly penalises parent institutions with a larger number of subsidiaries outside the home jurisdiction, as opposed to those institutions whose subsidiaries are established in the same jurisdiction as the parent entity. The respondent would have sympathy for a conclusion that underlines in this specific case the fact that a political discussion is ongoing in parallel, and which CEBS is not able to solve in the context of the national discretions. On the other hand, it cannot endorse CEBS's current argumentation and proposal. The respondent continues to be of the view that within the EU's 'single market', all three Pillars of the CRD should be applied at the consolidated level. This discretion should therefore be turned into a general rule and it urges CEBS to ensure that the discussion is continued both amongst CEBS's members and with the involvement of the European Commission.	CEBS confirms its conviction that this is one of the national discretions related to the scope of application that can only be changed in the context of a full review of the subject.	No change.
11. Article 70 (Directive 2006/48/EC)	One respondent agrees with CEBS's proposal. Another thinks that it is correct that this option is not given to Member States, but to the supervisory authorities. However, points (c) and (d) of Article 69.1 are very clear and can be applied objectively. When it can be confirmed that the conditions are met there is no reason for this condition to be applied in a divergent way. Instead, the condition should be applied as a general rule where the conditions are fulfilled.	CEBS believes that its proposal to implement the provision as a supervisory decision goes in the right direction without impacting the existing compromise on the scope of application.	No change.

	Another respondent would like to keep it as a national discretion.		
12. Article 72.3 (Directive 2006/48/EC)	One respondent agrees with CEBS's proposal. Two respondents would like to delete the discretionary part of the provision, transforming it into a mandatory provision. One of them wishes to extend the provision to parent undertakings established in the EU. Two other respondents note that the choice of agreeing that Pillar 3 is only applied at the consolidated level is given to the supervisory authorities. However, there have already been long discussions on the feasibility and problems of applying Pillar 3 at a sub-consolidated level. Given that the format and setup of the Pillar 3 disclosures are the responsibility of the institution, in interaction with the market, it is not clear why there would be a need to set up specific, separate criteria for assessing the comparability of the Pillar 3 disclosures. They question the 'main motivation for keeping the discretion', stated to be 'recognition of a group-wide approach while ensuring sufficient disclosure'. In their understanding, this option implies the opposite, namely of not recognising the group-wide approach. Supervisory authorities should also be satisfied that they receive 'sufficient disclosure' through the Common Reporting framework, whilst the markets for which the Pillar 3 disclosures are designed are indeed interested in the group-wide position. It is their strong belief that this discretion must be turned into a general rule. Another respondent rejects a supervisory decision for exempting banks belonging to a group from disclosure requirements if their parent company provides comparable information about them on a consolidated basis. Processing the data necessary to comply with the disclosure requirements is highly onerous for the banks and out of all proportion to the associated benefits. For market participants, group-level disclosure provides a more relevant basis on which to evaluate a bank's economic situation than separate disclosure by each individual member of the group.	CEBS believes that its proposal to implement the provision as a supervisory decision goes in the right direction without impacting the existing compromise on the scope of application.	No change.

	This discretion should therefore be changed into a general rule.		
13. Article 73.1 (Directive 2006/48/EC)	One respondent agrees with CEBS's proposal. Two respondents would prefer transforming it into an option for institutions. Two other respondents agree with CEBS's estimation that it does not make sense for this provision to be applied as a 'national discretion'. However, they do not agree with CEBS's proposal of a 'supervisory decision' as this implies the supervisor might force an institution to include a participation in consolidation. Clearly, this decision can only be taken by the institution, as is already now the case in the large majority of Member States. The Member State option should therefore be turned into an option for institutions, to be reviewed by supervisors in the normal process of supervisory review. Another respondent highlights that to promote the convergence of supervisory practices, it should be made clear that supervisory authorities need to agree on a common, pan-European interpretation of the criteria for deciding whether or not to include a bank belonging to a group in the scope of consolidation.	CEBS believes that its proposal to implement the provision as a supervisory decision goes in the right direction without impacting the existing compromise on the scope of application. Since most of the criteria referred to in Article 73.1 are subject to interpretation, CEBS's view is that only the competent authorities are in position prudently to interpret and assess the application of these criteria against their supervisory objectives.	No change.
14. Articles 22, 24 & 25 (Directive 2006/49/EC)	Two respondents agree with CEBS's proposal. Another one welcomes the proposal for Article 22 since it will ensure the ability to waive the consolidated requirements is retained. A group of investment firms operating with only limited licence presents a completely different risk profile to that of a group of credit institutions or other firms capable of dealing on own account. The CRD should therefore recognize this difference in risk profile and be proportionately applied. The respondent is also supportive of the proposals for Articles 24 and 25 since this will allow a group of investment firms to determine the most suitable approach to the calculation of its capital resources requirement, having regard to the nature of the risks inherent	CEBS welcomes the broad support for its proposals. Part 1 of Article 22 sets out various conditions which need to be fulfilled by the institution before a waiver can be considered. As the article explicitly provides for a "waiver", CEBS believes that this requires some element of supervisory judgement and as such these conditions should be	No change.

	within the group. With regard to Article 22 one respondent concurs that this is currently a decision given to supervisors. Following from CEBS's own classification of two types of supervisory decisions, the criteria given under Part 1 are however clear and objective, i.e. the provision should be turned into a general rule to be confirmed by the supervisor, without an additional discretionary element. The second part of this Article, on the other hand, does not have such clear criteria in it because it needs to be agreed between the supervisor and the firm. As regards Articles 24 and 25, the respondent recommends a general rule on the basis of the argumentation that all of the capital requirements set out in the Directive as general rules are minimum requirements, i.e. a firm can always choose to hold higher levels of capital if it deems them appropriate. It would be consistent that in this case also the provision be formulated as a general rule. One respondent would like to keep, or transform, it into a supervisory decision with no choice for supervisors. To ensure consistent supervisory practices one other respondent says that it should be clarified that supervisors need to base their decisions on exempting entities from the application of consolidated capital requirements on a common, pan-European interpretation of the relevant criteria.	regarded as a minimum which competent authorities should consider when making their decision on a case by case basis. (For example, competent authorities may wish to consider whether the "systems to monitor and control the sources of capital and funding" are indeed adequate in a particular case).	
Area: Counterparty risk in derivatives			
15. Annex III, Part 3 (Directive 2006/48/EC) (text above table 2)	One respondent agrees with CEBS's proposal. One respondent finds CEBS's argumentation on this discretion inconsistent. The question of whether an institution with significant commodities business should be using internal models is a general one on the institution's approach to business and risk management, which should be discussed with its supervisor in the normal process of supervisory review. When this upfront decision has been taken, the provision in question becomes	The criteria respondents are referring to are the requirements for the use of the option set out in Annex IV, point 21 of Directive 2006/49/EC. The treatment in this provision is a further relief in addition to that option. Therefore, CEBS believes that this additional relief should	No change.

	relevant. Another respondent would like to make the discretion an option to institutions. CEBS's argumentation in the analysis of this provision is that it cannot be turned into a general rule because it allows lower capital requirements. This argument ignores the fact that it is the clearly defined criteria for the application of this provision that justify lower capital requirements. CEBS's own formulation of the methodology made a distinction between provisions with sufficiently objective criteria, where compliance just needs to be confirmed, and provisions where the supervisor indeed has to take a judgement as to whether the criteria are fulfilled; therefore the logical consequence is to turn the provision into a general rule. While another one says that all banks that satisfy the stated requirements should be allowed to choose their method of calculating future potential credit risk. The discretion should be changed into an option for institutions.	be subject to the agreement of competent authorities and recommends leaving this provision as it is.	
16. Annex III, Part 6, point 7 (Directive 2006/48/EC)	The great majority of respondents think that CEBS is correct that this discretion is part of the overall process of the bank designing its model and having it approved by its supervisor. It is up to banks to set risk parameters based on their own judgement of the risks they face and to make provisions against losses with an appropriate degree of conservatism. The model approval process gives supervisors the right to question the bank's approach and assumptions as a whole, from a much more principles-based and general angle than by just focusing on α. One respondent thinks that CEBS's argumentation seems to reflect this understanding in principle, although it focuses too much on the role of the supervisor as opposed to the firm itself. However, the drafting proposal is a clear improvement in expressing the interaction between a bank and all the supervisors of the group within the model approval process.	CEBS appreciates that respondents agree that the use of a potentially higher alpha should be dealt with in the model approval process and should not be a national discretion by itself. Therefore CEBS's proposal is to delete the wording "but competent authorities may require a higher alpha" which means in CEBS's understanding the deletion of this explicit national discretion. However, as mentioned above, the competent authorities can challenge the level of alpha	No change.

	While two others stress that CEBS's argumentation also seems to reflect this understanding in principle. Therefore they would prefer that this national discretion should be deleted altogether.	during the model approval process.	
17. Annex III, Part 6, point 12 (Directive 2006/48/EC)	One respondent agrees with CEBS's proposal. The great majority agree with CEBS's explanation but do not believe that the proposed wording delivers the intended outcome. It is redundant and confusing to explicitly state in this provision that the use of own estimates for α is subject to the approval of the competent authorities, as it does indeed imply an approval process separate or in addition to the general process of model approval. The formulation should be adjusted to make it clear that (all) institutions using the Internal Models Method may use their own estimates of α, subject to a floor of 1.2	CEBS agrees that the proposed wording could be misleading and has amended it appropriately.	See advice (change in the drafting proposal).
18. Annex III, Part 7c (ii) (Directive 2006/48/EC)	One respondent agrees with CEBS's proposal. Another respondent highlights that it is not appropriate to simply sum up responses received for an impression of the importance of discretions. The extent to which one response covers a number of institutions, e.g. trade bodies, has to be considered, as well and it is, in particular, not appropriate to put supervisors' responses on an equal footing with industry responses. Two respondents stress that CEBS unduly equates a high level of conservatism with higher risk-sensitivity. Risk-sensitivity, in the spirit of the Basel II Accord, means aligning capital requirements closely with the risks actually incurred. CEBS's approach of proposing the higher level of conservatism for each case in question undermines this spirit. The other option considered by CEBS is to turn the Member State discretion into a supervisory decision. This ignores again the interaction between the firm and its supervisor, where it is in the first place up to the firm to design its models and methodologies, and then to discuss them with the supervisor. They agree that there is a review element under this specific provision, but request that it be recognised	CEBS is of the opinion that the separate calculation is the more risk sensitive approach and not the more conservative one. Furthermore, the implementation burden for separate and aggregate calculations seems to be similar. Therefore the proposal is still to delete the less risk-sensitive approach.	No change.

	that it takes place within the model approval process. In the opinion of other respondents each bank should be able to decide for itself on the most appropriate method of calculating the net-to-gross ratio. This decision can then be challenged by the competent authorities if necessary in the context of their ongoing supervision. They advocate changing this national discretion into an option for institutions. As an alternative, separate calculation of the net-to-gross ratio could be transformed into a general rule.		
Area: Standardised approach			
19. Article 80.3 and Annex VI, Part 1, Point 24 (Directive 2006/48/EC)	One respondent says that the possibility of using the method based on the credit quality of the central government should be kept. Therefore CEBS's proposal is satisfactory. Another one also fully agrees with CEBS's proposal. Given the significance of this provision in terms of both level playing field and consolidation difficulties for cross-border groups, two respondents express their strong view that this discretion must be turned into a general rule. Against the backdrop of the long discussions that industry, supervisors and policy makers have had on the damaging effects of the national discretion, they would perceive it as a major disappointment if there was at this stage still no agreement on addressing distorting provisions like the present one. Although CEBS's understanding of 'risk sensitivity' is the correct one for this case – as opposed to the generally more conservative option – it would not be helpful in practice. As CEBS rightly points out, external ratings exist in most countries only for a minority of institutions, so option b) would in practice lead to further inconsistencies, rather than harmonisation of practices. In this case, they therefore have a clear preference for option a), i.e. calculating risk-weighted exposure amounts using a method based on the credit quality of the central government,	In many Member States only a small minority of institutions are externally rated. Institutions in such Member States will be put at disadvantage if only the method based on the credit quality of the institution is allowed. The other possibility would be to keep only the method based on the credit quality of the central government. However, CEBS is averse to proposing keeping this less risk sensitive approach and deleting the more risk sensitive approach. CEBS is aware of the adverse consequences for cross border banks if the national discretion is kept unchanged. But CEBS also believes that the problem should be limited, as most of these banks will be on, or will move to, IRB.	No change.

	and deleting the alternative option b) altogether.		
20. Article 80.7 (Directive 2006/48/EC)	One respondent says this provision is crucial for co-operative banks. They would prefer a change to a general rule but would agree with CEBS's proposal as long as "there is judgment by the supervisor, but no choice (if in its judgement the criteria are fulfilled, the supervisor has to agree with the choice of the credit institution or investment firm)". The great majority agree with CEBS's proposal. One of them wishes competent authorities to verify ex post if the conditions are met. Another one welcomes CEBS's proposal very much and fully supports CEBS's drafting proposal, as well as its recognition of the significance of this provision and the consistent use of the general classification criteria and glossary. It would be an important step for this provision to be universally applied to all institutions that meet the applicable criteria, as confirmed by their competent supervisor.	CEBS welcomes the support for its proposal.	No change.
21. Article 80.8 (Directive 2006/48/EC)	One respondent thinks that this provision is crucial for co-operative banks. The great majority agree with CEBS's proposal. While one respondent highlights that an in-principle decision was taken, at the time of negotiation of the Directive, to treat institutional protection schemes in the same way as banking groups in respect of exemption from capital requirements for 'intra-group' exposures. The respondent does not believe this decision to be adequate. However, it concurs that it is consistent, following this initial decision, to align Article 80.8 with Article 80.7.	CEBS welcomes the broad support for its proposal.	No change.
22. Article 83.2 (Directive 2006/48/EC)	Two respondents agree with CEBS's proposal. While another two respondents say that the quality of unsolicited	This provision is not intended to be a national discretion, but a supervisory decision to be	No change

	ratings should be subject to joint assessment by competent authorities along the lines of the procedure for recognising ECAIs for risk weighting purposes. The result of the joint assessment should be binding on all national supervisors. If it does not prove possible to come to a joint decision in the short term on the use of unsolicited ratings, the respondent agrees with the proposed supervisory decision. Supervisors should nevertheless agree on a common approach to using unsolicited ratings in the longer term. One respondent does not believe that it is consistent to give the option of allowing institutions to use unsolicited ratings to the supervisory authorities, rather than to Member States as it does not make sense to allow some institutions to use unsolicited ratings, but others not to. Indeed, this consideration must be a general one. In addition it expresses its reservation against the use of unsolicited ratings since the quality of such ratings is questionable and therefore recommends removing the discretion. As a second best, however, the respondent could agree with CEBS's recommendation of incorporating this provision into the general ECAI approval process (though it might be possible to find clearer wording than that currently proposed by CEBS). In any case, CEBS's proposal is unacceptable, as there is a false premise in the explanation that it could be changed only when 'a common practice has developed' in the markets where unsolicited ratings are used more frequently. This is not an example of an acceptable market difference or one that should be safeguarded by legislation. Furthermore, one respondent would like to delete the discretionary part of the provision, transforming it into a mandatory provision.	applied on a case by case basis that should have been implemented by all Member States. It is CEBS's understanding that the application of this provision is made on a case by case basis for the ECAIs and not for credit institutions. In the context of the recognition process the competent authorities will assess if unsolicited ratings issued by one ECAI can be recognised as eligible for CRD purposes and will apply this decision to all credit institutions under its jurisdiction. This issue was clarified in the proposal set out in the Advice. Regarding respondents' request for a binding joint assessment, see CEBS's response on national discretion No 23.	
23. Annex VI, Part 1, Point 5 (Directive	One respondent welcomes and supports a joint assessment process, but proposes to include a "comply or explain" clause or would ask CEBS to further elaborate on guidelines safeguarding	CEBS has considered respondents' request to go one step further and oblige	No change.

2006/48/EC)	a common approach. Two others also welcome CEBS's proposal of a joint assessment process as it would be an important step towards more consistency in the application of the CRD and would support supervisors' efforts for more cooperation in practical, day-to-day tasks. These respondents question CEBS's statement that following the joint assessment process, there will be individual judgements by all the authorities involved. The joint process should logically lead to a common decision, which Member States should be much encouraged to endorse. Another respondent points out that CEBS should consider a binding outcome, which might have to be considered in conjunction with more general questions about supervisory cooperation and the role of CEBS. In addition, the respondent would accept a positive outcome of the recognition check for at a minimum, the (non-EU) G10 countries of the General Agreements to Borrow, as well as for the member countries of the European Economic Area (EEA). Two respondents would prefer the introduction of a binding mutual recognition clause.	supervisors to reach a consensus which would subsequently be binding for all supervisors, but cannot support it. This would result in a fundamental change to the existing allocation of tasks between CEBS and supervisors and more generally to the current supervisory framework. Such a change falls outside the mandate given by the European Commission and cannot thus be recommended by CEBS. CEBS would also like to point out that the positive experience with the joint ECAI recognition process have led to the conclusion that the established process – without the suggested change – has proved to have far-reaching positive consequences for the level of harmonisation.	
24. Annex VI, Part 1, Point 11 (Directive 2006/48/EC)	One respondent welcomes and supports a joint assessment process, but proposes to include a "comply or explain" clause or would ask CEBS to further elaborate on guidelines safeguarding a common approach. Two respondents support CEBS's proposal that the decision on recognising the equivalency of third country arrangements should be given to supervisors if that allows a joint recognition process. The respondents highlight that process should lead to a joint decision, or a jointly agreed strong recommendation at the minimum. There is indeed no reason why the same borrowers should be treated differently in different jurisdictions or for loans granted by different creditors.	Regarding respondents' request for a binding joint assessment, see CEBS's response on national discretion No 23.	No change.

	Furthermore one respondent would request that the full list of recognised third country regional governments and local authorities be published in CEBS's supervisory disclosure framework. Two other respondents would prefer the introduction of a binding mutual recognition clause. In addition one of the respondents believes the joint assessment process should apply not only to the equivalence of a third country's supervisory regime, but also to the designation of those regional governments and local authorities in the third country which receive the same treatment by their supervisors as does its central government.		
25. Annex VI, Part 1, Point 14 (Directive 2006/48/EC) and 26. Annex VI, Part 1, Point 15 (Directive 2006/48/EC)	One respondent agrees with CEBS's proposals. Another two agree with CEBS's assessment that this provision is a decision that requires local judgement and must be taken case-by-case (and binding mutual recognition is already required in Point 16 of Annex VI, Part 1). The respondents stress that the terminology of 'supervisory decision' should not be misunderstood to imply that there might be differences in the recognition of PSEs across institutions, but that the recognition of PSEs must be valid in the same way for all institutions with exposures to these entities. In practice, it is not transparent for institutions which PSEs have been recognised by the different authorities. The supervisory disclosure framework provides a very useful tool for such disclosures, but they regret CEBS's proposal that supervisors might publish the 'criteria' that they apply. Indeed, the criteria as such should be consistent for all authorities. They might be stated in addition, but in order to ensure that the information is of practical value to banks, it should give a full list of all individual PSEs that have been recognised. One respondent would prefer the introduction of a binding mutual recognition clause and all competent authorities should publish the criteria or the list of exposures treated as exposures	CEBS welcomes the support expressed for the proposal to keep the text of the Directive (Points 14 and 15) unchanged, since this provision is not intended to be a national discretion but a supervisory decision to be applied on a case-by-case basis, with a binding mutual recognition clause included in Point 16. This binding mutual recognition clause should alleviate respondents' concerns by contributing to a harmonised treatment. Transparency will be ensured by the disclosure of the information available (criteria and/or the list of recognised PSEs).	No change.

	to institutions and the central governments.		
27. Annex VI, Part 1, Point 17 (Directive 2006/48/EC)	One respondent welcomes and supports a joint assessment process, but proposes to include a "comply or explain" clause or would ask CEBS to further elaborate on guidelines safeguarding a common approach. Two respondents believe that a joint assessment process should result in a joint decision, rather than individual declarations from its member authorities. In a second step it should be considered, in alignment with general discussions about supervisory arrangements, whether the joint decision should be binding or have the status of a 'strong' recommendation. Furthermore, one respondent would request that the full list of recognised third country public sector entities will be published in CEBS's supervisory disclosure framework. Two respondents would prefer the introduction of a binding mutual recognition clause (and the "may" should be replaced by "shall"). In addition, one of the respondents believes the joint assessment process should apply not only to the equivalence of a third country's supervisory regime, but also to the designation of those public-sector entities in the third country which receive the same treatment as institutions by their supervisors.	CEBS welcomes the support expressed for the proposal to deal with this discretion through a joint assessment process. Regarding respondents' request for a binding joint assessment, see CEBS response on national discretion No 23.	No change.
28. Annex VI, Part 1, Point 37 (Directive 2006/48/EC)	One respondent agrees with CEBS's proposal. Two respondents welcome CEBS's proposal which is in line with the current implementing decisions of the majority of Member States and will eliminate the discriminatory effects on the institutions in the remaining countries.	CEBS welcomes the support for its proposal.	No change.
29. Annex VI, Part 1, Point 40 (Directive 2006/48/EC)	One respondent agrees with CEBS's proposal. Two respondents welcome CEBS's proposal which flows from a consistent application of the criteria it sets out for turning discretions into general rules when they have clear, objective	CEBS welcomes the support for its proposal and has clarified in its advice that the result of deleting the discretionary part of the provision is in fact to turn	See Advice.

	and verifiable criteria attached to them.	this discretion into an option for credit institutions, provided the conditions set are met.	
30. Annex VI, Part 1, Point 63 (Directive 2006/48/EC)	The great majority agrees with CEBS's proposal. One respondent can accept CEBS's proposal though it would prefer a general rule.	CEBS welcomes the broad support for its proposal.	No change.
31. Annex VI Part 1 Point 64 (Directive 2006/48/EC)	One respondent has no strong views, but this proposal should be consistent with the proposal on national discretion 33. Another one thinks that the discretion should be kept in its present form, since the exposure already shows a lower risk resulting from the value adjustment of a least 20%. The mortgage collateral which secures the amount of the outstanding loan is also part of a developed market and the credit institution fulfils the requirements in the CRD concerning the monitoring and valuation of the collateral. This allows for a relatively precise calculation of the proceeds from a forced sale. The CEBS's proposal may also result in inappropriate tightening. Another one would prefer transforming it into a general rule or at least the introduction of a binding mutual recognition clause. The strict minimum requirements for the eligibility of real estate collateral ensure the recoverability of the collateral in case of the default of a customer. Therefore the lower risk weight and the discretion itself are considered to be prudent from their side. A further respondent would prefer to turn this provision into a general rule. However, CEBS's proposal of maintaining the national discretion with an implicit binding mutual recognition clause would be an acceptable alternative. This would also take account of the fact that most authorities have already acknowledged the appropriateness of the 50% risk weight by applying the discretion. One respondent questions CEBS's rationale in considering the	Market participants strongly objected to the deletion of the national discretion. CEBS has considered this feedback and, based on it, is proposing to keep this national discretion with the binding mutual recognition implicit in the text. While the subject is mortgages on residential property, it is local market circumstances for which binding mutual recognition is appropriate. However, CEBS notes that some of its members strongly question the prudence of the treatment allowed by this discretion and as a fall back option CEBS would not object to the removal of the provision from the CRD with a short transitional period.	See Advice.

	complete deletion of this provision, as value adjustments of at least 20% and the existence of collateral that fully secures the nominal amount of the outstanding loan facility are strong safeguards. These clearly lower the exposure at risk and justify lower risk weights. Furthermore, residential properties in well developed markets can be properly valued, allowing a detailed calculation of proceeds from forced sale procedures. This provision should apply as a general rule, and should be combined with binding mutual recognition as considered by CEBS as one option. One respondent would like to delete the discretionary part of the provision, transforming it into a mandatory provision. Another respondent does not consider it appropriate to drop this national discretion because the risk associated with the exposure is reduced by the risk provisioning and by the existence of valuable security. It is in favour of binding mutual recognition. In mature markets, a detailed valuation of the residential property in question can be made. In its view, the valuable nature of the security and the ability to calculate precisely how much could be realised from a sale reduce the risk of loans secured by residential property in mature markets. This should be reflected by assigning a lower risk weight. Another one thinks that the national discretion with binding mutual recognition should be retained in the interest of creating a level playing field. The competent authorities of the Member State where the residential property is located should decide about the applicability of the regulation since they have the best knowledge about local market conditions.		
32. Annex VI Part 1 Point 66 (Directive 2006/48/EC)	One respondent says that this discretion should be removed for level playing field purposes because the wording is quite open, which allows for divergence in its application. Another respondent supports the removal, because maintaining this national discretion does not solve the problem since not all	Having considered the feedback received, CEBS still believes that this discretion should be kept in the present form since it allows the competent authorities the necessary flexibility they need to	No change.

	Member States have implemented it. Such issues should be addressed under Pillar 2. The great majority agrees that this discretion is given to the supervisory authorities, rather than Member States. However, that does not solve the competitive distortions resulting from divergent application. CEBS states itself that this discretion will be applied to all institutions in the respective jurisdiction, i.e. it is not a supervisory case-by-case decision. In terms of a level playing field, the respondent can only concur on the difference between 'across the-board' decisions taken by the supervisory authorities, rather than Member States, where they are linked to a joint process between the authorities that encourages convergence. This is not the case here. The discretion should be deleted altogether. Furthermore, one respondent would like to delete the discretionary part of the provision, transforming it into a mandatory provision.	address "high risk" investments and crisis situations.	
33. Annex VI Part 1 Point 67 (Directive 2006/48/EC)	One respondent says if national discretion 32 was removed, it has no objection to CEBS's proposal to remove national discretion 33. If national discretion 32 is maintained, as proposed by CEBS, national discretion 33 should also be maintained to provide some relief to the minority of banks operating in jurisdictions where the 150% risk weight option (national discretion 32) is exercised. If national discretion 33 is maintained, national discretion 31 should also be maintained. One respondent advocates keeping this national discretion in its present form, since it is expedient to give financial institutions positive incentives to set up provision reserves for possible future losses. One respondent supports transforming it into a general rule. The creation of provisions and value adjustments can be seen as a deduction from own funds since this directly influences the earnings of the institutions. Having this in mind, the lower risk	Although most respondents objected to the deletion of this discretion CEBS notes divergent views among them and remains less convinced with the arguments they put forward on the need to keep the discretion. CEBS also notes that the prudence of the treatment allowed by the discretion is questionable. Since CEBS does not see a strong need to ensure a consistent treatment with discretion 31, the proposal is to remove discretion 33 from the CRD with a short transitional period.	See advice.

	weights for exposures, where value adjustments of 20% or 50% have been established, seem to be justified. Two respondents advocate the introduction of binding mutual recognition. They do not consider it appropriate to delete this discretion because these risk provisioning measures effectively lower the risk of the exposure. One respondent believes that national discretion 32 should be deleted and that this point should also be removed automatically from the CRD with a transition period as proposed by CEBS. One respondent also believes that Points 66 and 67 (national discretions 32 and 33) should be removed from the CRD. In the case that national discretion 32 remains, they ask that it should not be changed at the CRD level without the introduction of a transitional period or to transform the provision into a general rule. One respondent would like to delete the discretionary part of the provision, transforming it into a mandatory provision.		
34. Annex VI Part 1 Point 68 (e) (Directive 2006/48/EC)	One respondent supports fully CEBS's proposal since this discretion is used by Danish mortgage banks. Two respondents do not consider it appropriate to raise the loan-to-value ratio of loans secured by commercial property from 60% to 70%. As CEBS points out correctly, the majority of Member States do not exercise this discretion. To avoid competitive distortion, this national discretion should be dropped. Two other respondents believe that the argument of 'split interests' is not justified at this stage of the discussion. As there are clear and objective criteria for the application of this discretion, it would be consistent to turn this discretion into a general rule.	Having considered the feedback received, CEBS's proposal is still to keep this national discretion in the present form. This national discretion is not important for most of the Member States and is considered by some members not to be prudent, so transforming it into a general rule is not a feasible solution. However, for some Members the option is very important and removing it even with a long transitional period would have a significant impact on their	No change.

		economy. The level playing field considerations are outweighed by the cost and impact in the Member States where it would be abolished.	
35. Annex VI Part 1 Point 85 (Directive 2006/48/EC)	The great majority agree with CEBS's proposal.	CEBS welcomes the support for its proposal.	No change.
36. Annex VI Part 3 Point 17 (Directive 2006/48/EC)	The great majority agree with CEBS's proposal.	CEBS welcomes the support for its proposal and clarifies in its advice that the deletion of the discretionary part of the provision in fact transforms it into an option for credit institutions.	See advice.
Area: IRB			
37. Article 84.2. (Directive 2006/48/EC)	One respondent thinks that CEBS's proposal is satisfactory. Another respondent also agrees with CEBS's proposal. Member States that have not yet implemented the provision should be urged to do it as soon as possible. The great majority say that this is a discretion given to supervisory authorities and not to Member States. However, the criteria for its application are sufficiently clear and objective and it is in the responsibility of the supervisor – or, where applicable, the college of supervisors – to confirm their fulfilment. Where they are fulfilled, the provision should be applied as a rule and at the consolidated level, in line with the general principles set out by CEBS. One respondent underlines the practical significance of this discretion which makes divergent treatment particularly harmful.	CEBS understands that the decision to apply this provision belongs to supervisors on a case by case basis in the context of the supervisory approval process of IRB models since it closely reflects the structure of the specific banking group. In this context the degree of clarity and objectivity of the criteria is irrelevant. Also, transforming this provision into a general rule is not a feasible solution.	No change.

	One respondent would like to delete the discretionary part of the provision, transforming it into a mandatory provision. Another one moves towards the implementation of this article as a general rule - to avoid huge amounts of discussion among/with regulators.		
38. Annex VII, Part. 1, Point 6 (Directive 2006/48/EC)	One respondent agrees with CEBS's proposal. Member States that have not yet implemented the provision should be urged to do it as soon as possible. The great majority agree that this provision forms part of the IRB approval process, and that it should be consistently implemented in all Member States. They recognise that the precondition of 'substantially strong' underwriting characteristics and other risks characteristics is not an objective criterion. Therefore two respondents' preference would be for the provision to be incorporated entirely into the model approval process. One respondent would prefer that CEBS's members establish common criteria through practical cooperation and that CEBS establishes a common understanding of when these criteria can be deemed to be fulfilled. The great majority suggest that the wording should be reformulated to reflect that it is part of the model approval process: "*Institutions may generally assign preferential risk weights of 50% to exposures in category 1, and a 70% risk weight to exposures in category 2, where they can demonstrate to the competent authorities that this treatment is appropriate on the basis of the strengths of their underwriting characteristics and other risk characteristics*". One respondent would like to delete the discretionary part of the provision, transforming it into a mandatory provision.	CEBS has considered transforming this discretion into an option for institutions (the supervisory assessment would be part of the more general IRB approval process), but has rejected that solution because the criteria for assigning the preferential risk weights are not objective and respondents to the consultation were unable to provide CEBS with more objective criteria. CEBS's proposal is therefore to implement the provision as a supervisory decision which is part of the approval process. To answer respondents' concerns about a level playing field, CEBS will request its members to disclose any criteria used in the supervisory disclosure framework, which may lead to future follow-up work if a consensus can be reached.	See advice.

	Another one agrees with CEBS's view that the risk weights for SL exposures should be evaluated as part of the overall IRB approval process. If a level playing field is to be created, however, competent authorities should agree on a single set of criteria for permitting more favourable treatment of SL exposures and apply these criteria to all European banks.		
39. Annex VII, Part. 1, Point 13 (last sentence) (Directive 2006/48/EC)	One respondent agrees with CEBS's proposal. Two respondents disagree with CEBS's assessment that this provision should not be considered a 'high priority' for the only reason that it is more important in some countries than in others. The discretion is extremely important for providers of consumer credit. Moreover, CEBS's review of the discretion's application shows that 70% of Member States have already chosen to apply it. Two respondents recognise divergence in the use and set-up of local wage accounts. However, where collateralised credit facilities can be or are linked to a wage account, the provision should apply as a general rule (e.g. change the wording into "*when collateralised credit facilities are linked to a wage account, the requirement that the exposure be unsecured may be waive"'*). One respondent says while local legislation may play a role in the existence and use of revolving retail exposures linked to a wage account, it takes the view that if these do exist, the option should be left to the credit institution to decide whether the exposures should be recognised as qualifying revolving exposures (if all other conditions are met) or whether they should be treated as collateralised exposures. The respondent proposes the following wording for point 13 (last sentence): "*When collateralised credit facilities are linked to a wage account, institutions may choose to treat such exposures as qualifying revolving exposures. In this case, amounts recovered*	CEBS is of the opinion that this discretion relates to local market conditions as the subject matter is collateral linked to wage accounts. For that reason it is appropriate to keep the national discretion in its current form and add a binding mutual recognition clause. In addition the discretion relates to national laws other than banking laws and reflects a common practice in several Member States.	No change.

	from the collateral shall not be taken into account in the LGD estimate". Another one points out that the national discretion with mutual recognition will create an additional burden for cross border banking groups, therefore its proposal is to transform into a general rule.		
40. Annex VII, Part 1, Point 18 (Directive 2006/48/EC)	The great majority agree with CEBS's proposal.	CEBS welcomes the support for its proposal and clarifies in its advice that the deletion of the discretionary part of the provision transforms it into an option for credit institutions.	See advice.
41. Annex VII, Part. 2, Point 5 and 7 & Annex VIII, Part 1, Point 26 (Directive 2006/48/EC) **and** **45 Annex VII, Part. 2, Point 20 & Annex VIII Part 1, Point 26 (Directive 2006/48/EC)**	One respondent agrees with CEBS's proposal. Another respondent does not agree with CEBS's proposal to delete the provision in the absence of a better understanding of the potential impact. Therefore it would be more consistent to combine this discretion with binding mutual recognition, as sufficient impact assessment data are not yet available. One respondent believes that the possibility of recognising unfunded protection providers, subject to certain conditions, is important due to the continued evolution of the contract structures of personal guarantees. This provision has a significant impact on, in particular, the factoring business. As personal guarantees may indeed differ between Member States, it is the right approach to leave the initial judgement to the home authority, i.e. to maintain this provision, but to combine it with binding mutual recognition so that institutions in other Member States could benefit from guarantees from the same protection provider. One respondent favours the introduction of binding mutual recognition.	CEBS has considered the feedback received and is proposing to keep both national discretions 41 and 45 in their current form with the addition of a mutual recognition clause.	See advice.

	One respondent proposes maintaining national discretion under 41 and 45 of the current version because they believe that national supervisory authorities must maintain their right to enlarge the list of eligible guarantors due to the continual evolution of the contract structures of personal guarantees that may differ in the national frameworks and the possible changes to the credit standing of the guarantors already listed. With respect to risk mitigation techniques for insolvency, they highlight the absence of insurance policies on credits among the acceptable techniques for risk mitigation: these play a significant role in the type of risk management used in factoring. They underline that recourse to this technique for the transfer of risk associated with the debtors transferred is favoured by the fact that in both factoring and insurance the risk is accepted on portfolio logic, even though each unit in the aggregate is evaluated specifically. They believe that the evolution of the contract structures used, specifically on the matter of the effectiveness of the guarantee with respect to the insured party's obligations, the modality and the times of the execution of the guarantee as well as the maximum limit of the policy, can render this risk mitigation technique acceptable with respect to the requirements set out for personal guarantees. With respect to the dilution risk, the obligations assumed by the guarantor is not based on mitigating the risks of the principal debtor's insolvency, but rather by mitigating the risk that the transferred debtor will not miss a payment for the outstanding debt due to the underlying commercial relationships, that is to say the supply of goods/services by the transferor. In this context, mitigating the risk of a missed payment by the debtor is reduced by the actions undertaken by the transferor (substituting goods/services, a discount being applied to the debtor purchaser, etc) whose effectiveness is not reflected in insolvency ratings. To this end, they believe that transferring companies with a rating below the minimum level set out in the Directive, i.e. class 2 should fall within the range of eligible guarantors if the contractual structures attribute to the transferor the role of guarantor for dilution risk as is the case with Italy. Moreover they highlight that the dilution risk involves different types of		

	financial operations based on trade receivables: in the light of an international comparison, these operations are different even at a national level, therefore the contractual structures of the guarantees may also be difficult to compare.		
42. Annex VII, Part. 2, Point 12 and 13 (Directive 2006/48/EC)	One respondent agrees with CEBS's proposal. One respondent disagrees strongly with CEBS's argument that the use of this discretion is linked to "local market conditions and market practices" and advocates strongly that this discretion must be deleted. This is a typical example of supervisors taking different approaches that penalise some institutions as opposed to others. The respondent also disagrees with CEBS's blunt assertion that the discretion cannot be deleted because it provides a more 'risk-sensitive' approach, which again confuses the progressive concept of risk-sensitivity with the contrary concept of applying the same level of conservatism to all institutions in one jurisdiction, irrespective of their risk profile. Two respondents would like to remove the provision from the CRD (in favour of country homogeneity avoiding market distortions).	CEBS acknowledges that there are a variety of different approaches among Members. However, on the one hand it does not seem sensible to delete the provision since it goes in the direction of a more risk-sensitive approach; on the other hand it seems difficult to delete the discretionary part of the provision since only a minority of Member States have implemented it and seem to be applying it in a proportionate way.	No change.
43. Annex VII, Part. 2, Point 15, first sentence (Directive 2006/48/EC) **and** **44. Annex VII, Part. 2, Point 15, last sentence (Directive 2006/48/EC)**	One respondent says that the last decades have proved that the structure of Austrian Limited-profit Housing providers (high level of assets and a long term debt financing via mortgages) and the general market situation have led to a minimal risk in the financing of housing in that sector; a margin in the risk calculation depending on maturity and enterprises' size does not seem adequate. The respondent therefore advocates that the national discretions should be kept in their present form. Two respondents draw attention to the extraordinary importance of real estate in Germany to politics and to public opinion as well as to improving the political, legal and fiscal conditions of the sector. The financing structure of real estate investments in Germany (and other countries) is characterised by long-term mortgage loans secured by residential real estate. Past and	CEBS notes that long-term SME financing is a difficult issue which is highly sensitive for Austria and Germany. These two Member States emphasize that long-term SME financing has a long lasting tradition and has passed the test of time and if these Member States were not allowed to apply a flat maturity of 2.5 years any longer, this could seriously damage the economy of these countries. However, from a technical	See advice.

	present experiences show that this way of financing has a low risk. The respondents advocate that the national discretions are especially important for countries with such a long-term financing culture and should therefore be kept. The removal of these national discretions would cause overhead charges for long-term repayment that would have especially negative effects for housing and real estate enterprises in Germany. One respondent favours transforming it either into an option for institutions or mutual recognition. These discretions are rooted in market specificities and their deletion would unduly burden institutions with a focus on SMEs. Two respondents strongly recommend that this national discretion be retained. Deletion would have unforeseeable consequences for the long-term funding of SMEs throughout Europe. (According to estimates by the Deutsche Bundesbank, the 14 banks using the advanced IRB approach in Germany already cover around 45% of total risk-weighted exposure amounts. This figure is expected to rise even further in future.) They also point out that this national discretion is part of the so-called "SME compromise" reached by the Basel Committee on 21 July 2002. Deletion could consequently have serious political implications and an adverse effect on the further convergence of supervisory law in the EU. One respondent does not endorse the argument of 'local market conditions' in this case, which merely disguises political compromises that have been made in opposition to the risk-based approach intended by Basel II. It would agree with the deletion of this provision after a transition period, but finds ten years too long for that purpose; instead it proposes a transition period of five years. One respondent would prefer to delete the discretion (national discretion 43 and 44) in favour of country homogeneity avoiding market distortions. In consideration of the current market practices, a transition phase, even if shorter than proposed, for	prudential perspective, an activity that is higher risk according to the IRB models and data contained in them should be subject to an appropriately higher interest rate (to reflect the actual risk). The view of the majority of CEBS members is therefore for deletion of the discretion with a transitional period to mitigate any adverse impact on local markets, such as housing associations and SME's. The 10 year term proposed appears to be a reasonable compromise between the voices calling for maintaining the national discretion and the respondents calling for deletion with a short transitional period.	

	instance 5 years, is considered possible.		
46. Annex VII, Part. 4, Point 56 (Directive 2006/48/EC)	One respondent agrees with CEBS's proposal. The great majority agree that this provision requires a supervisory judgement that the adjustments made by institutions are considered appropriate. However, this judgement is already implicit in the requirement that credit institutions "demonstrate" to the authorities that this is the case. The second step must therefore be automatic, as set out in CEBS's general explanation of a supervisory decision that involves only judgement on the fulfilment of criteria, but no additional choice. When institutions are able to demonstrate the adequacy of the adjustments made, then "competent authorities shall allow" flexibility in the application of the required data standards. They agree that this provision must be implemented in all Member States. One respondent would like to delete the discretionary part of the provision, transforming it into a mandatory provision.	CEBS understands that the decision to apply this provision belongs to supervisors on a case by case basis in the context of the supervisory approval process of IRB models. In this context the degree of clarity and objectivity of the criteria are irrelevant. Also, transforming this provision into a general rule is not a feasible solution.	No change.
Area: CRM			
47. Annex VIII, Part 1, Point 15 (Directive 2006/48/EC)	The great majority agree with CEBS's proposal. One respondent would prefer the introduction of a binding mutual recognition clause.	CEBS welcomes the broad support for its proposal. For clarification CEBS's proposal is to transform this provision into an option for credit institutions and a binding mutual recognition clause is not applicable in this case.	No change.
48. Annex VIII, Part 1, Point 20 (Directive 2006/48/EC)	Two respondents agree with CEBS's proposal. Another two respondents do not consider it appropriate that supervisors might recognise the same kind of collateral for some institutions but not for others, and would therefore not agree that this provision should be exercised as a national decision. On	CEBS agrees with the respondents' feedback and has adjusted the drafting proposal in the Advice accordingly.	See Advice (change in the drafting proposal).

	the other hand, CEBS's specific proposal of deleting the discretionary part of the provision would be acceptable although the proposed wording might be clarified (e.g. "institutions may use as eligible collateral amounts…" or "collateral amounts receivable… are eligible as collateral").		
49. Annex VIII, Part 1, Point 21 (Directive 2006/48/EC)	One respondent welcomes this proposal but argues that where the two conditions are fulfilled, the collateral should be recognized as a general rule or at least that the mutual recognition clause should be binding. Furthermore, in case the collateral is not recognized, the respondent advocates the introduction of a "comply or explain" clause. One respondent agrees with CEBS's proposal. Two respondents would agree that market specificities may play a role. For example, liquid markets might exist for certain types of collateral in some countries, but not in others. However, this recognition is already implicit in the wording of the provision as it stands, which gives flexibility to each authority to check that liquid markets and publicly available market prices exist for the type of security in question. Therefore there is no justification for an additional choice by supervisors – i.e., where the two conditions are fulfilled, the collateral should be recognised as a general rule. CEBS's proposal of mutual recognition would be helpful as an addition, although there is no prudential justification for this recognition not being binding. One respondent welcomes CEBS's proposal that supervisors disclose the recognition of collateral in the supervisory disclosure framework. However, it questions the usefulness of supervisors disclosing merely the 'criteria', rather than the list of physical items. Disclosure must be designed, on the one hand, to allow all banks across the EU to apply the same risk weights for the same circumstances; and on the other hand, to highlight any discrepancies between supervisors' practices and support the move to convergence in day-to-day supervisory practice.	CEBS's analysis shows that the provision is only quite important in a few Member States and it would be less prudent to introduce it across the board. However, CEBS believes the cost of keeping the national discretion can be adequately compensated by adding mutual recognition. Where the collateral is local, and recognized due to local market conditions, other supervisors will be expected to take on board the local supervisors' judgement. As this article can also apply to collateral which is not bound to the local market but to collateral in other Member States and third countries (e.g. in the case of moveable assets), binding mutual recognition cannot be proposed here. The cost of creating a list of all recognised assets across the EU would probably be too high to match the expected benefit.	No change.

	Two respondents would prefer the introduction of a binding mutual recognition clause (and competent authorities should publish the list of eligible collateral or the criteria used in their recognition). One respondent stresses that the recognition of other (i.e. non real estate) physical collateral under the CRD is one of the most important issues for the European leasing industry – this could be better reflected in CEBS's analysis - because leasing is a form of asset-based finance where the lessor, contrary to other means of (secured) finance, maintains the ownership of the leased asset throughout the contract term. The lessor thus benefits from additional security due to the ownership of the asset and should be allowed to recognise this protection. The respondent believes CEBS's proposal could go further; supervisors should no longer have the choice not to recognise collateral if they are satisfied that the given criteria (liquid markets, publicly available prices) are met by the institution. Failure to remove this additional level of discretion will maintain today's current situation of Member State A accepting a valid asset as collateral but Member State B not recognising the same category of assets, even though these assets fulfil all the necessary prudential requirements. This clearly creates an unlevel playing field for lessors. The respondent's view is that it is inappropriate for CEBS to state that "it would be less prudent to introduce (the discretion) across the board". It is stressed that supervisory oversight as to the respect of the fulfilment of the given criteria should be maintained although there should be no further degree of supervisory discretion. The following wording is suggested for point 21: "*The Competent Authorities ~~may~~ shall recognise as eligible collateral physical items of a type other than real estate collateral, ~~if~~ when satisfied as to the following: (a) liquid markets for disposal of the collateral do exist in an expeditious and economically efficient manner; and (b) well-established, publicly available market prices for the collateral do exist. The institution must be able to demonstrate that there is no evidence that the*		

	net prices it receives when collateral is realised deviates significantly from these market prices. Either the criteria used or the list of physical items recognised as eligible collateral other than real estate shall be disclosed by each competent authority in the supervisory disclosure framework referred to in Article 144 of this Directive". The respondent welcomes the inclusion of a requirement to disclose more information in the supervisory disclosure framework, but calls on CEBS to ensure that all supervisors provide complete and comparable information. The respondent expresses its concern about the non-binding mutual recognition. It questions what exactly is meant by collateral "that is not bound to the local market". If it relates to moveable assets (which is likely to be the case for the vast majority of assets in the other physical collateral category), any concerns on the part of CEBS may not be well-founded, at least in the case of leasing. This is due to the fact that part of the minimum requirements for recognising these assets when they are leased (Annex VIII, Part 3, Para 11) is to require institutions to have robust risk management in place to address the use to which an asset is put and to ensure that there is a framework in place establishing the lessor's ownership and thus its capacity to repossess the asset if necessary. Consequently, if the lessor can prove to its supervisor that these systems are in place to guarantee the quality of the collateral and the supervisor is satisfied, why should other supervisors not be required to recognise this decision even if the asset is a moveable asset? In other words, why should mutual recognition not be binding in this case? Moreover, CEBS should consider whether its current drafting proposal adequately achieves its stated objectives - "*where the collateral is local and recognised (…) other supervisors will be expected to take on board the local supervisor's judgement*". With the wording proposed by CEBS for the mutual recognition clause nothing obliges other supervisors to effectively do so ("*the competent authorise of other Member States may allow their credit institutions to recognise that collateral as eligible"*). The respondent recommends that any mutual recognition clause introduced in this area of the CRD be binding.		

50. Annex VIII, Part 1, Point 28 (Directive 2006/48/EC)	One respondent would prefer transforming it into a general rule. Two respondents question in what way local market and business specificities play a role here, and express their disappointment that CEBS again uses the argument of "risk sensitivity". In addition they criticise CEBS for using both terms as a catch-all for provisions that it does not want to harmonise. In their view, the requirement that the financial institution to be used as a protection provider is authorised and supervised under equivalent standards to those applied to credit institutions is a strong and sufficient safeguard, on the basis of which a general rule of recognition should apply. The great majority of respondents underline also that in this case mutual recognition must be binding for the sake of consistency of supervisory approaches. One respondent believes CEBS's proposal to add mutual recognition is an improvement on the current situation, but does not see how the maintenance of a discretion is justified. The current text provides for sufficiently robust criteria (the institution to be used as a protection provider must be authorised and supervised under equivalent standards to those applied to credit institutions) which, if fulfilled, no longer requires any level of supervisory discretion.	CEBS considers that this provision is a national discretion which requires a local assessment of equivalence and supervision. However, CEBS agrees with respondents that if some institutions are recognised in a Member State their protection should be available to all credit institutions. Therefore a binding mutual recognition clause is proposed.	See advice.
51. Annex VIII, Part 2, Point 9 (a) (ii) (Directive 2006/48/EC)	One respondent would prefer transforming it into a general rule. Two respondents recognise that differences in insolvency law in different countries create different "local market conditions". However, this fact is again implicitly recognised in the wording of the provision itself ("the claims of preferential creditors provided for in legislative or implementing provisions"). Therefore it is not tenable to argue again on the grounds of local market conditions for the implementation of the provision. The provision should be implemented as a general rule, i.e. collateral should always be recognised where the claims are also recognised in national	This discretion has been introduced to address the fact that some claims subordinated to preferential creditors should be recognized as adequate credit risk mitigants. The prevailing differences between national insolvency laws create local market specificities, which CEBS considers should be addressed by introducing a mutual recognition clause.	No change.

	insolvency law. The great majority of respondents think that CEBS's proposal of mutual recognition is a helpful addition and should, on prudential grounds, be binding.	However, because of prevailing differences in insolvency laws, namely in the definition of preferential creditors' claims, this may result in quite different levels of prudence, which supports CEBS's proposal that the mutual recognition clause should not be binding.	
52. Annex VIII, Part 3, Point 12 (Directive 2006/48/EC)	Two respondents agree that these provisions should be seen as part of the model approval process. However, the second part of the provision again combines a clear and objective criterion with an additional and unnecessary choice for the supervisor: i.e. where transactions are covered under a bilateral master netting agreement, credit institutions should as a rule be allowed to use their internal models for margin lending transactions. This approach of deleting additional choices where the criteria are clear and objective is in line with the general criteria set out at the start of the consultation paper. Furthermore, although the impact of this individual discretion may not be substantial as such, they remind CEBS that it is the large number of national discretions that leads to important divergences in CRD implementation between countries and supervisors and that this has been identified to be particularly problematic in the contexts of Pillar 2 and Pillar 3. One respondent agrees with CEBS that compliance with the conditions for making use of this rule should be verified as part of the approval process for internal models. All European banks which fulfil the relevant criteria should be allowed to apply the provision. CEBS is urged to either recommend an option for institutions or give corresponding clarification in its advice.	CEBS's recommendation was updated to clarify that both options included in this provision shall be interpreted as options for credit institutions, subject to approval/recognition by the competent authorities based on the assessment of compliance with the (clear and sufficient) criteria established in the CRD.	See advice.
53. Annex VIII, Part 3, Point 19 (Directive	One respondent agrees with CEBS's proposal. Two respondents agree with CEBS's proposal and would like to	CEBS welcomes the support for its proposal and clarifies in its advice that the deletion of the	See Advice.

2006/48/EC)	clarify at the same time that the supervisor will retain the competence to check its satisfaction with the adequacy of correlation measurements. They believe that it would be more consistent to rephrase the proposed wording ("credit institutions may use empirical correlations … if they demonstrate to the competent authorities that their system for measuring correlations is sound and implemented with integrity").	discretionary part of the provision in fact transforms the provision into an option for credit institutions which is in accordance with the comments received.	
54. Annex VIII, Part 3, Point 43 (Directive 2006/48/EC)	The great majority of respondents agree with CEBS's proposal.	CEBS welcomes the support for its proposal.	No change.
55. Annex VIII, Part 3, Point 72 (Directive 2006/48/EC)	One respondent agrees fully with CEBS's proposal. One respondent states that if the provision is kept after the review in 2012, it should be as a general rule. As this provision is due to expire at the end of 2012, two respondents agree that it is not necessary to change it at this stage. However, they consider CEBS is right to point to the level playing field impact of this provision. Therefore they believe that if at the time of the review it is decided to maintain this discretion, this must be as a general rule, rather than through the addition of a mutual recognition clause. Mutual recognition can be helpful in some specific cases, but will enshrine the different CRD implementations rather than lead to more alignment. One respondent very much supports CEBS's recommendation to maintain the discretion as it is and to ensure that the required review takes place before end 2012. Additionally, it believes that if the outcome of the review is in favour of maintaining lower LGD levels the discretion should be applied as a general rule in order to reduce level playing field concerns. However it is noted that the respondent is not in agreement with CEBS's statement that "this is a less prudent option and there are no real local market characteristics driving the choice". It is recalled that	CEBS welcomes the broad support for its proposal and considers that respondents' concerns on the level playing field issues should be taken into account at the time of the review of this provision.	No change.

	LGDs for lease exposures tend to be lower than for other forms of secured finance as lessors benefit from the ownership of the leased asset, implying (amongst other things) that they are able to repossess the leased asset without going through lengthy bankruptcy procedures or realising a pledge on the asset. One respondent would like to delete the discretionary part of the provision, transforming it into a mandatory provision.		
56. Annex VIII, Part 3, Para 89 (Directive 2006/48/EC)	One respondent agrees with CEBS's proposal. Two respondents agree with CEBS's proposal and would note at the same time, as regards CEBS's reference to a "supervisory decision", that it would not be justified to recognise the same kind of collateral for one institution, but not for another. One respondent would like to delete the discretionary part of the provision, transforming it into a mandatory provision.	CEBS welcomes the broad support for its proposal. CEBS's proposal first clarifies that this provision is not a national discretion but a supervisory decision to be applied on a case by case basis. Nevertheless, CEBS's recommendation is to transform this provision into an option for credit institutions since the conditions underlying this treatment were deemed to be stringent enough from a prudential perspective. Additionally, CEBS cannot propose transforming it into a mandatory provision because, once it allows for a beneficial treatment, institutions must have the chance to decide if they want to apply it or not,	No change.
Area: Securitisation			
57. Article 152 (10) (b) (Directive 2006/48/EC)	The great majority of respondents agree with CEBS's proposal.	CEBS welcomes the support for its proposal.	No change.

58. Annex IX, Part 4, Para 30 (Directive 2006/48/EC)	The great majority of respondents agree with CEBS's proposal.	CEBS welcomes the support for its proposal.	No change.
59. Article Annex IX, Part 4, Para 53 (last sentence) - (Directive 2006/48/EC)	The great majority of respondents agree with CEBS's proposal.	CEBS welcomes the support for its proposal.	No change.
Area: Op risk			
60. Article 102.4 & Annex X, Part 4, Points 1 and 2 (Directive 2006/48/EC)	The great majority of respondents agree with CEBS's proposal.	CEBS welcomes the support for its proposal.	No change.
61. Article 104.3 (Directive 2006/48/EC)	Two respondents agree with CEBS's proposal. The great majority agree that this provision requires a supervisory judgement. However, this judgement should be restricted to assessing whether the criteria set out in Annex X, Part 2, points 10-12, are met, and there should be no additional choice, where the criteria are met (as confirmed by the supervisor), institutions should be allowed automatically to use an alternative indicator. One respondent suggests that CEBS recommends an option for institutions or makes it clear in its advice that banks may apply this approach as long as all qualifying conditions are met. One respondent requires "may" should be replaced by "shall".	This Article gives competent authorities an authorisation provision over the Alternative Standardised Approach (ASA). Re-drafting the Article as an option for credit institutions would not change the nature of the provision, as it will remain a supervisory decision given the level of authorisation and oversight required in the criteria set out in Annex X. CEBS clarifies in its advice that this supervisory decision should be taken in the context of the approval process.	No change.

62. Article 105.4 (Directive 2006/48/EC)	One respondent agrees with CEBS's proposal. Another respondent agrees with CEBS's proposal that Member States who have not implemented the provision yet should be urged to do it as soon as possible. The great majority of respondents see this provision as part of the model approval process, where the competent authority first approves the overall model designed by the institution, including the level of application. The level at which the criteria are to be met is intrinsically linked to that, i.e. as soon as AMA is applied at the consolidated level, institutions should automatically be allowed to meet the applicable criteria at this level. They question CEBS's concerns about turning this provision into a general rule as this does not impede supervisors' competence to validate institutions' models. One respondent would like to keep the discretion or transform it into a supervisory decision with no choice for the supervisors ("may" should be replaced by "shall"). Another one points out that the present wording of Article 105.4 does not ensure that all European banks can use this provision if they comply with the necessary conditions.	CEBS understands that the decision to apply this provision belongs to supervisors on a case by case basis in the context of the supervisory approval process of the AMA. In this context the degree of clarity and objectivity of the criteria is irrelevant.	No change.
63. Annex X, Part 2, Point 3 and 5 (Directive 2006/48/EC)	One respondent agrees with CEBS's proposal. Another respondent agrees with CEBS's proposal that Member States that have not yet implemented the provision should be urged to do it as soon as possible. The great majority require that as in national discretion 61, there should not be any additional choice for supervisors once it can be confirmed that the clearly defined criteria are met – i.e., this provision should be turned into a general rule, effectively giving the choice to institutions (i.e., credit institutions may use the ASA, as a general rule, subject to meeting the requirements	See CEBS's response to No. 61	No change.

	set out in points 5 to 11). CEBS's call for estimates on the costs and benefits of this particular provision ignores the overall impact of the high number of national discretions, which has in their understanding been recognised by amongst others, the European Commission (i.e., turning an national discretion into a general rule or deleting it entirely should be the default option, unless there are strong arguments for another treatment). One respondent suggests that CEBS recommends an option for institutions or makes it clear in its advice that banks may apply this approach as long as all the qualifying conditions are met. One respondent would like to keep the discretion or transform it into a supervisory decision with no choice for the supervisors ("may" should be replaced by "shall").		
64. Article 20.2 (Directive 2006/49/EC)	One respondent agrees with CEBS's proposal. Another respondent is broadly supportive of CEBS's proposal since this discretion has already been applied by 73% of Member States. In its view this discretion is the key to ensuring that the application of the CRD is appropriately applied to lower risk firms, and its retention is a necessity. One respondent is concerned about inconsistent application of this provision, which has significant level playing field implications. If CEBS does not consider it feasible to give this option consistently to all investment firms, then CEBS's members could work closely together to ensure consistency of treatment. In addition, CEBS's members should be required to publish within the scope of the supervisory disclosure framework, the criteria according to which they choose, or do not choose, to grant this option. One respondent would like the discretion to be an option for institutions.	Members have applied the discretion on the basis of proportionality for limited authorisation investment firms. Keeping the discretion for supervisors to decide on a case by case basis is the appropriate approach to the discretion and to convergence. In addition CEBS will encourage its members to publish, within the scope of the supervisory disclosure framework, the criteria according to which they choose to grant this option in order to foster consistency.	No change.

	Another respondent suggests deleting the provision to avoid competitive distortions.		
65. Article 20.3 (Directive 2006/49/EC)	The great majority agree with CEBS's proposal. One respondent suggests deleting the provision to avoid competitive distortions.	CEBS welcomes the broad support for its proposal.	No change.
Area: Qualifying holdings			
66. Article 122.1 (Directive 2006/48/EC)	The great majority agree with CEBS's proposal.	CEBS welcomes the support to its proposal.	No change.
67. Article 122.2 (Directive 2006/48/EC)	One respondent supports CEBS's proposal. Two respondents would prefer transforming it into a general rule to avoid fragmentation ("may" should be replaced by "shall"). Two respondents question why CEBS did not propose a general rule in this case. In the first instance, there is no justification that this provision should be implemented in some countries, but not in others. Furthermore, the requirement of 100% capital coverage should alleviate any prudential concerns. It is their suggestion to turn this provision into an automatic general rule, i.e. where institutions exceed the applicable limits, the excess must be fully covered.	On the one hand, the industry in previous feedback had requested that this national discretion should not be deleted. On the other hand, if this discretion were to be turned into a general rule, it would contradict point 8.1 of the Large Exposures advice.	No change.
Area: Transitional provisions			
68. Article 153, First sentence (Directive 2006/48/EC)	One respondent agrees with the introduction of the binding mutual recognition clause since it contributes to harmonization. It would also propose to review the option before the expiration date. This option corresponds to a treatment provided by previous European Directives; such options, by themselves do not create competitive distortions as they correspond to the situation of 'mature' markets. This option should not be deleted without a new review, as it may become useful to countries	CEBS does not consider it appropriate to reopen the negotiations on the transitional provisions and advocates letting them to expire. To introduce a review clause is outside of the scope of the national discretions	No change.

	where leasing is growing (the suggestion is to add to the first sentence of Article 153, Para 1, 'Before the end of the period, this discretion shall be reviewed'). One respondent agrees with CEBS's proposal. Two respondents agree that the decision on recognising collateral should, in general, lie within the competent authority of the country where the collateral is located, and should be combined with binding mutual recognition as proposed by CEBS. One respondent suggests that this provision should be reviewed before its expiration. One respondent welcomes CEBS's analysis and conclusion and considers binding mutual recognition to be an appropriate solution until the end of 2012. It is recalled that the real estate leasing industry is concentrated in 4 or 5 main markets (i.e. Italy, Germany, France, Spain, Portugal…) which explains why the majority of Member States do not make use of the discretion. However, within these countries, its use is of great importance to the industry. The removal of the discretion would result in a severe and unjustified penalty for the real estate leasing industry, which may see its capital requirements double. Such a treatment would not be risk-based as real estate lessors, due to the fact that they own the leased property, benefit from its immediate and direct protection. The respondent recommends that a review clause be inserted into the text as this was the original thinking behind the introduction of the provision into the CRD. The review should take place before end 2012 and if the outcome of the review is to keep the treatment proposed in the discretion, the provision should be applied as a general rule. Also an equivalent provision was already available under the previous Directive 2000/12/EC and it is of significant importance for institutions that do not possess historical statistical data due to the existence of small portfolios in this area.	exercise.	

69. Article 153, Second sentence (Directive 2006/48/EC)	The great majority agree with CEBS's proposal.	CEBS welcomes the support for its proposal.	No change.
70. Article 154.1 (Directive 2006/48/EC)	One respondent say that in several countries (e.g. France); terms of payment are quarterly for real estate operations (credit to retail, to corporates, commercial real estate leasing transactions). To have a good estimate of the true situation of the debtors, it is necessary that two quarterly instalments or rents remain unpaid, i.e. 180 days. This option is especially necessary since the Member States may diverge in the specific number of days across product lines (which allows the taking into account of local conditions of dates of payment or delays of payment by public sector entities, as it is the case in France). The respondent therefore wishes to keep the national discretion and to delete its expiration date. In addition, if the options were deleted when 180 days are necessary to have a good estimate of the true situation of debtors, the default notion would no longer have meaning. The great majority agree with CEBS's proposal. One respondent believes that this provision should be maintained beyond the current expiry date. This is due to the existence of legal requirements for the authorisation of lease rental payments by PSEs in certain countries that imply that 90 days is too short a period to be able to identify whether such an entity is truly in default. Equally, it is also common practice for corporate lease rental payments in these countries to be made on a quarterly basis. The recommendation is to remove the expiry date (so aligning this discretion with discretion 113 for the Advanced Approaches).	CEBS does not consider it to be appropriate to reopen the negotiations on the transitional provisions and advocates letting them expire. To introduce a review clause is outside of the scope of the national discretions exercise.	No change.
71. Article 154.2 (Directive	One respondent says that due to the sequential implementation (art. 85.1), a number of Danish mortgage banks are not using the IRB approach for all areas yet. They should be able to use	CEBS does not consider it appropriate to reopen the negotiations on the transitional	No change.

2006/48/EC)	the transitional provision in subsequent areas. Another respondent suggests the date of expiration of the provision should be deleted or postponed, since we are still at the beginning of the implementation of the CRD and competitive distortions must not result from too premature an expiry date for this national discretion. Postponing the expiration date, or even more its removal, could encourage institutions to adopt the IRB approach (for instance in case of a recent merger or takeover). One respondent agrees with CEBS's proposal. Two respondents do not agree with CEBS' statement that this discretion will no longer be relevant after 2009. Indeed, the provision is of major importance at the present time and can be relevant for specific cases in the future (e.g. for new acquisitions of credit institutions in the SA approach). They urge CEBS, in the short term, to work with its member authorities to make sure that the possibility of a shorter use test is given to all institutions in the EU. In addition, they suggest that this provision should be reviewed before its expiration, to examine whether it can be maintained as a general rule. Should this legislative change not be made before end-2009, one respondent calls on the regulators to apply this provision with some flexibility. For example where institutions have applied to use the advanced approaches in due course, but the application cannot immediately be approved, this provision should nevertheless be applied. One respondent says that to maintain an incentive for the rating based approach and given the speed of IT changes and implementation, and the acceleration in the evolution of credit processes, one year's use requirement is deemed acceptable, especially for IRB banks which are rolling out their rating systems. This option should remain after the prescribed expiry date and should be changed from a national discretion into a	provisions and advocates letting them expire. To introduce a review clause is outside of the scope of the national discretions exercise.	

	general rule.		
72. Article 154.3 (Directive 2006/48/EC)	One respondent says that due to the sequential implementation (art. 85.1), a number of Danish mortgage banks are not yet using the IRB approach for all areas; they should be able to use the transitional provision in subsequent areas. One respondent agrees with CEBS's proposal. Two respondents call on CEBS to ensure that this national discretion is used by all Member States, and they also request that the national discretion should be reviewed in due course with a view to keeping it as a general rule. One respondent thinks that due to the short expiration date there is no need to modify it. At expiry, for the same reasons asunder 71, the country option could be converted in a general rule or into a supervisory option. In the last case the supervisory option should be extended to all the legal entities belonging to the same group under home-host coordination, to avoid differences between banks in the same group which are located in different countries.	CEBS does not consider it appropriate to reopen the negotiations on the transitional provisions and advocates letting them expire. To introduce a review clause is outside of the scope of the national discretions exercise.	No change.
73. Article 154.4 (Directive 2006/48/EC)	One respondent agrees with CEBS's proposal. Two respondents highlight the divergent implementation of this quite significant provision and object to CEBS's argument of "market specificities" to explain these divergences. They believe that this discretion is important not just as a temporary clause, but also to facilitate the transition to the advanced approaches generally. They suggest that it should be reviewed before its expiration, with a view to keeping it as an option for institutions (to be confirmed by the supervisor).	CEBS does not consider it to be appropriate to reopen the negotiations on the transitional provisions and advocates letting them expire. To introduce a review clause is outside the scope of the national discretions exercise.	No change
74. Article 154.6 (Directive 2006/48/EC)	One respondent would prefer to transform it into a general rule. Two respondents believe that the expiration date of end 2017 is too long to maintain the competitive distortions that arise from	CEBS does not consider it to be appropriate to reopen the negotiations on the transitional provisions and advocates letting	No change.

	this significant provision. (There is no prudential justification for such large divergences in the risk weightings of equity positions of between 100% and 400%.) They suggest transforming this provision into a permanent general rule.	them expire.	
75. Article 155 (Directive 2006/48/EC)	One respondent suggests that the national discretion should be applied after the expiration date. One respondent agrees with CEBS's proposal. Two respondents highlight the divergent implementation and the competitive distortions arising from this provision. As an alternative to its expiry after 2012, they request that it is reviewed in due course to consider maintaining it in the form of a general rule. However it should be ensured that its calibration is in line with the work of the Basel Committee. One respondent highlights that the exemption should be granted to all European institutions for level playing field reasons and therefore be transformed into a permanent general rule within a reasonably short period of time. Otherwise, besides biased competition, there could be paradoxes such as a shareholding held by a subsidiary being granted the exemption while it is not allowed at the consolidated level. That is more relevant given the long expiry date.	CEBS does not consider it to be appropriate to reopen the negotiations on the transitional provisions and advocates letting them expire. To introduce a review clause is outside of the scope of the national discretions exercise.	No change
76. Annex VII, Part 2, Point 8 (second subparagraph) (Directive 2006/48/EC)	Two respondents support CEBS's proposal. Two respondents welcome CEBS's clarification that this provision is already an option given to credit institutions to facilitate the transfer to the IRB approach and agree with CEBS's proposal to review the national discretion before its expiration. They also point out that 20% of Member States have not transposed this provision (in their understanding a breach of EU law to be, in principle, pursued by the European Commission) and therefore CEBS should urge the relevant member authorities to implement this provision at this stage.	CEBS welcomes the support for its proposal.	No change.

77. Annex VII, Part 4, Point 66, 71, 86 and 95 (Directive 2006/48/EC)	One respondent would prefer to transform it into a general rule. Two respondents state that this is a national discretion of great importance for facilitating the transition towards the IRB approach in general, and not only for a limited period of time. The absence of such a possibility would be a major obstacle for institutions in adopting the more risk-sensitive approaches. In practice, this already seems to be recognised by the fact that the overwhelming majority of Member States exercise the discretion for all institutions in their jurisdictions, without any additional tests or discrimination between different institutions. This is also appropriate in recognition of the fact that for some segments and products, the evolution of markets and changes in credit processes can lead to discontinuities in historical time series. Banks have to take account of such observations in the appropriate selection of the time span that generates the most meaningful sample data, where a shorter period can sometimes be preferable to a longer one. Against this backdrop, they do not see the rationale for attaching an additional supervisory choice to the provision and believe it should be turned into a general rule. One respondent stresses that this represents a relevant option and therefore would like to see its transformation into a general rule. There are segments and products where the evolution of the market and the changes in credit processes are such as to cause breaks in historical time series; for this reason banks have to select appropriately the time span for sample data and this could bring about a reduction in the time span.	CEBS believes its proposal to transform the national discretion into supervisory decision corresponds to the respondents' expectations, because this provision shall be implemented by all Member States and applied on a case by case basis every time the IRB supervisory approval process is conducted (irrespective of the time).	No change.
78. Article 44 (Directive 2006/49/EC)	One respondent agrees with CEBS's proposal but would like to have this discretion as a general rule. Another one agrees with CEBS's proposal. One respondent highlights the current divergence in implementing this national discretion. As an alternative to its deletion after expiration in 2012, it would be valuable to review	CEBS does not consider it to be appropriate to reopen the negotiations on the transitional provisions and advocates letting them expire. To introduce a review clause is outside the scope of the national discretions	No change.

	in due course whether this more favourable risk weight has a permanent justification. (It should be ensured that the calibration at the EU level is consistent with the rules agreed in the BCBS.) One respondent says that the possibility of applying a different coefficient to the business line 'trading and sales', if a certain condition is met, should not be left to national discretion but should be applied consistently across the countries. In fact, the application of a preferential risk weigh of 15% to the business line 'trading and sales' only in some Member States would lead to different results in calculating TSA credit institutions' capital requirement for operational risk – even considering the same gross income allocation – solely as a matter of geographical location. This provision should be reviewed before its expiration.	exercise.	
79. Article 46 (Directive 2006/49/EC)	One respondent agrees with CEBS's proposal but would like to have this discretion as a general rule. One respondent agrees with CEBS's proposal. Another one believes that the more favourable risk weight might have permanent justification and that the provision should be reviewed before its expiration. If this review demonstrates that a permanent general rule is justified, any changes in calibration need to be in line with the BCBS.	CEBS welcomes the broad support for its proposal. CEBS does not consider it to be appropriate to reopen the negotiations on the transitional provisions and advocates letting them expire. To introduce a review clause is outside the scope of the national discretions exercise.	No change.
80. Article 47 (Directive 2006/49/EC)	Two respondents agree with CEBS's proposal. One respondent highlights that since the BCBS is currently still in the process of considering the rules for incremental risk in the Trading Book, this national discretion will have to be reviewed once that a decision has been taken, and that there might be the need for an additional transition period after 2009. Furthermore, one respondent says that the possibility of applying a different coefficient to the business line 'trading and sales', if a certain condition is met, should not be left to national	CEBS does not consider it to be appropriate to reopen the negotiations on the transitional provisions and advocates letting them expire. To introduce a review clause is outside the scope of the national discretions exercise	No change.

	discretion but should be applied consistently across the countries. In fact, the application of a preferential risk weigh of 15% to the business line 'trading and sales' only in some Member States would lead to different results in calculating TSA credit institutions' capital requirement for operational risk – even considering the same gross income allocation – solely as a matter of geographical location. This provision should be reviewed before its expiration.		
Area: Trading book			
81. Article 18.2 and 3 (Directive 2006/49/EC)	The great majority supports CEBS's proposals. One respondent would like to transform article 18.3 into an option for institutions.	CEBS welcomes the support for its proposal. Regarding article 18.3, CEBS considers that supervisors are in a better position to determine which factors are suitable to assess trading book activity.	No change.
82. Article 19.2 (Directive 2006/49/EC)	Two respondents consider that is important that the provision should become a general rule (cf. proposed reformulation of article 19.2). The great majority of respondents recognise the technical difficulties of turning this provision into a general rule, in the absence of a specific definition of the risk requirement to adopt or the applicable criteria. However, a majority of Member States already apply this provision and have thus already identified solutions. They suggest that the initiative be left to institutions to propose the appropriate approach ("a specific risk requirement may be set for any bonds falling within points 68 to 70"), and that CEBS's member authorities cooperate in parallel to ensure a common approach (competent authorities exercising this discretion could provide guidance on suitable criteria). In order to support a common approach, it would be helpful if the authorities were required to publish the criteria applied and their manner of exercise of this provision in the supervisory disclosure framework.	Taking into account the feedback received from respondents on the need to maintain this treatment, CEBS proposes to keep the national discretion in its current form until a full review of the trading book rules can be conducted.	See advice.

83. Article 19.3 and Annex I, point 52 (Directive 2006/49/EC)	One respondent welcomes and supports a joint assessment process, but proposes to include a "comply or explain" clause, or would ask CEBS to elaborate further on guidelines safeguarding a common approach. The great majority of respondents welcome CEBS's proposal of a joint assessment process as a first step. However, the second step must be to combine the process with a joint decision. There is no prudential reason that third country CIUs be considered eligible in some countries, but not in others – i.e. conceptually, the outcome of the joint process should be binding. They would furthermore suggest that there should be a requirement to disclose recognised third country CIUs in the supervisory disclosure framework. Two respondents would prefer the introduction of a binding mutual recognition clause.	CEBS welcomes the broad support for its proposal. In addition, CEBS will request its members to disclose the list of recognised third country CIUs in the supervisory disclosure framework. Regarding respondents' request for a binding joint assessment, see CEBS's response on national discretion No 23.	No change.
84. Article 26 (Directive 2006/49/EC)	One respondent supports CEBS's proposal. One respondent favours transforming it into an option for institutions because the management of trading positions on a consolidated basis depends on the institution's internal management structure. The great majority stress that this provision significantly affects the level playing field and they do not see the rationale for allowing some institutions such offsetting, while denying it to others, when both are managed on a consolidated basis. This is irrespective of any "market specificities" claimed by CEBS, but depends purely on the institution's internal management structure. It is therefore clear to the industry that this provision must be turned into an explicit choice for institutions.	CEBS considers that this discretion directly relates to the scope of application. Furthermore, the criteria need to be assessed on a case-by-case basis by the supervisory authorities.	No change.
85. Article 33.3 (Directive 2006/49/EC)	One respondent agrees with CEBS's proposal. Two respondents agree with CEBS that this provision should be seen as a mistake in the CRD given that Annex VII already	CEBS welcomes the support for its proposal.	No change.

	provides this option as a choice for institutions, and that Article 33.3 should be deleted.		
86. Annex I, Point 4, 2nd paragraph (first sentence) (Directive 2006/49/EC) and 87, 89, 90, 98 and 100	For the national discretions 86, 87, 89, 90, 98 and 100, two respondents agree with CEBS's suggestion of totally removing the possibility of using margining requirements for the calculation of capital requirements.	CEBS welcomes the support for its proposal.	See Advice.
88. Annex I, point 5, 2nd paragraph (Directive 2006/49/EC)	The great majority agree with CEBS's proposal.	CEBS welcomes the support for its proposal.	No change.
91. Annex I, point 14, next to last paragraph (Directive 2006/49/EC)	One respondent favours immediate removal. Two respondents recognise the good intentions behind CEBS's current proposal of giving institutions the responsibility for their own models and model parameters. However, they do not believe that this proposal makes sense for the STA approach to which this provision refers. CEBS's proposed wording would create confusion as to who would be authorised to decide on a higher specific risk charge. They advocate that this provision should be entirely deleted. Another respondent advocates that the provision should be removed from the CRD. The standardised measurement method is a simple, homogeneous approach to calculating a bank's capital requirements for market risk. To enable risk to be reflected with sufficient accuracy while at the same time ensuring that implementation is as straightforward as possible, this approach is less risk-sensitive than internal risk models. It rejects the proposal to introduce a higher specific risk charge to cover any underestimation of risk because it is not clear how	CEBS has taken into account the comments from respondents and has amended its advice to propose the removal of the provision from the CRD. .	See Advice.

	banks are supposed to calculate these higher capital charges. In its view, it would be better to address any underestimation of risk under Pillar 2.		
92. Annex I, point 26 (Directive 2006/49/EC)	The great majority agree with CEBS's proposal.	CEBS welcomes the support for its proposal.	No change.
93. Annex I, point 35, 1st paragraph (Directive 2006/49/EC)	Two respondents agree that the criteria currently set out in the CRD leave some scope for divergent views and understand CEBS's concern with ensuring that the provision is used appropriately. However, it should be clear that the authorities' role is restricted to checking in what way the applicable criteria are met and that there should be no choice which is separate or additional to this judgement. They suggest that the provision be rephrased in the following way: "*By derogation from point 34, institutions may hold capital of 2% rather than 4% (…) if they demonstrate to the competent authorities that the following conditions are met: (…)*". Two respondents would like to give the discretion as an option for institutions. Competent authorities should set standard, objective criteria for applying a lower capital charge to cover the specific risk of highly liquid assets and monitor compliance on the basis of these criteria.	CEBS has considered transforming the provision into an option for credit institutions, but since the criteria defined for applying the lower capital requirement are subjective and no objective criteria resulted from the feedback from respondents, CEBS has rejected this possible solution for the time being. Therefore CEBS's proposal is to implement the provision as a supervisory decision at the national level.	See Advice.
94. Annex I, point 35, 2nd paragraph (Directive 2006/49/EC)	The great majority agrees with CEBS's proposal.	CEBS welcomes the support for its proposal.	No change.
95. Annex III, point 2.1, last sentence (Directive 2006/49/EC)	One respondent agrees with CEBS's proposal. The great majority do not see the rationale for applying this national discretion divergently between different institutions, i.e. to allow some to calculate open positions in net present value,	Having considered the feedback from respondents, CEBS proposes to transform this supervisory decision into an option for credit institutions for	See Advice.

	but not others. It does not make sense in their view to turn this national discretion into a supervisory decision to be taken on a case-by-case basis. They rather support the second option proposed by CEBS, i.e. to give the choice consistently to institutions.	currencies. This would allow all credit institutions to choose between the two approaches for currencies in line with the current practice. There is, however, currently a lack of information on how this discretionary treatment would actually work in practice for the treatment of open positions in gold. Consequently CEBS proposes to maintain the current treatment of gold as a supervisory decision.	
96. Annex III, point 3.1 (Directive 2006/49/EC)	One respondent would prefer to transform it into a general rule. The experience of recent years shows that where currencies are demonstrable closely correlated to each other, the risk is substantially lower. Accordingly a lower capital requirement is justified. In addition a close correlation of two currencies does not depend on the domicile of the institution. Two respondents state it is the industry's collective experience that lower capital requirements are justified in the case of closely correlated currencies, i.e. to allow these lower capital levels for supervisory purposes is the more "risk-sensitive" approach in the true sense of the word. Furthermore, they do not see a rationale for adopting different approaches between institutions, where the same combination of currencies is concerned. If two currencies are closely related, this relationship does not change its character from one institution to another. It is therefore neither justified to delete the provision entirely, nor to turn it into a "supervisory decision". It should be turned into a general rule, or an option for institutions which leads to the same outcome. One respondent would like to make the discretion into an option	Having considered the feedback from respondents, CEBS's proposal is to transform this national discretion into an option for credit institutions as it agrees that correlations are objective and not specific to institutions, and that therefore it is not appropriate for supervisors to decide this treatment on a case by case basis.	See Advice.

	for institutions.		
97. Annex IV, point 7 (Directive 2006/49/EC)	Two respondents agree with CEBS's proposal. One respondent generally welcomes CEBS's proposal of turning the national discretions into a general rule. Nevertheless it would prefer that this national discretion be turned into an option for institutions (wording proposal: "the following positions may be regarded as positions in the same commodity" - rather than shall be regarded).	CEBS welcomes the support for its proposal. In CEBS's view banks have a choice regardless of the use of the term "shall" since they will be free not to regard closely linked commodities as the same.	No change.
99. Annex IV, point 10, 2nd paragraph (Directive 2006/49/EC)	The great majority agrees with CEBS's proposal.	CEBS welcomes the support for its proposal.	No change.
101. Annex IV, point 14 (Directive 2006/49/EC)	The great majority agrees with CEBS's proposal. One respondent would like to delete the discretionary part of the provision and to transform it into a mandatory provision.	CEBS welcomes the broad support for its proposal. As regards the call to turn this provision into a mandatory provision, offsetting is always a possibility rather than a requirement. Therefore, it is unclear why this should be different here.	No change.
Additional provisions			
102. CRM, Annex VIII, Part 1, point 16, 1st sentence (Directive 2006/48/EC)	One respondent says that since this national discretion is not applied in Ireland it would prefer to transform it into a general rule. The great majority support CEBS's proposal. One respondent highlights that if supervisors are satisfied that the given conditions are fulfilled there is no longer any justification for maintaining the provision as a discretion. The	CEBS notes that there is no consensus in the responses received. On the one hand CEBS considers that this provision is a national discretion to be applied across the board so making it into a supervisory decision on a case by case basis is not appropriate. On the other hand	No change.

	following wording is suggested for point 16, 1st sentence: "*The competent authorities ~~may~~ shall waive the requirement for their credit institutions to comply with condition (b) in point 13 for exposures secured by residential real estate property situated within the territory of that Member State if the competent authority have evidence that (...).*" In addition it calls on CEBS to ensure that the appropriate level of disclosure is made by the competent authorities within the supervisory disclosure framework. One respondent would like to keep this discretion or transform it into a supervisory decision on the criteria with no additional choice for supervisors.	local supervisors are best suited to assess whether these criteria are met for their markets, and therefore CEBS cannot support transforming it into a general rule. See provision No 103 for the binding mutual recognition clause.	
103. CRM, Annex VIII, Part 1, point 16, last sentence, (Directive 2006/48/EC)	One respondent supports CEBS's proposal. However, it questions why the proposed treatments of the national discretion relating to mutual recognition of residential and commercial real estate under the Standardised Approach differ from the proposed treatments under the IRB Approach. Under the Standardised Approach, CEBS proposes converting these discretions into an option for the firm. Under the IRB Approach, CEBS proposes converting the discretions into binding mutual recognition clauses. While the outcomes of both approaches are equivalent, it would in its view, be preferable if the approaches were consistent. The great majority support CEBS's proposal. Two respondents agree that this provision should be turned into a requirement for binding mutual recognition, in combination with national discretion 105. However, one of those respondents requests that the present provision is also turned into a general rule, whereby the requirement for institutions to comply with the condition in point 13(b) should always be waived when competent authorities are satisfied that the applicable criteria are met. In addition it	CEBS welcomes the broad support for its proposal. In CEBS's view the treatments of the national discretion relating to mutual recognition of residential and commercial real estate under the Standardised Approach do not differ from the proposed treatments under the IRB Approach. Nevertheless the drafting of national discretion 137 has been amended to avoid misunderstandings.	No change.

	welcomes CEBS's proposal for supervisors to disclose in the supervisory disclosure framework how they make use of the waiver, but also notes that the disclosure must be effective to both provide the necessary clarity for institutions and to support the promotion of a common approach across CEBS's members. Two respondents note that there seems to be an inconsistency between, on the one hand, CEBS's proposals for national discretions 102 to 105, and those for national discretions 136-143 (or 141 and 143).		
104. CRM, Annex VIII, Part 1, point 17 (Directive 2006/48/EC)	One respondent points out since this national discretion is not applied in Ireland it would prefer to transform it into a general rule. The great majority agree with CEBS's proposal. One respondent highlights that if supervisors are satisfied that the given conditions are fulfilled there is no longer any justification for maintaining the provision as a discretion. The following wording is suggested for point 17: *"The competent authorities of the Member States may shall waive the requirement for their credit institutions to comply with the condition in point 13(b) for commercial real estate property situated within the territory of that Member State, if the competent authorities have evidence that the relevant market is well-developed and long-established and that loss-rates stemming from lending secured by commercial real estate property satisfy the following conditions (…)"* One respondent would like to keep the discretion or transform it into a supervisory decision with no additional choice for supervisors.	See provision No 102.	No change.
105. CRM, Annex VIII, Part 1, point 19 (Directive	One respondent requires that it should be consistent with the approach proposed under the standardised approach (option for institutions).	CEBS welcomes the support for its proposal.	No change.

2006/48/EC)	The great majority support CEBS's proposal.		
106. CRM, Annex VIII, Part 1, point 25 (Directive 2006/48/EC)	The great majority agree with CEBS's proposal.	CEBS welcomes the support for its proposal.	No change.
107. CRM, Annex VIII, Part 1, point 8 (Directive 2006/48/EC)	The great majority agree with CEBS's proposal.	CEBS welcomes the support for its proposal.	No change.
108. CRM, Annex VIII, Part 2, point 16 (Directive 2006/48/EC)	The great majority agree with CEBS's proposal.	CEBS welcomes the support for its proposal.	No change.
109. CRM, Annex VIII, Part 3, point 59 (Directive 2006/48/EC)	The great majority agree with CEBS's proposal (this provision is an error in the CRD, given that the provision to which it refers is an option for institutions that does not need a mutual recognition clause).	CEBS welcomes the support for its proposal.	No change.
110. CRM, Annex VIII, Part 3, point 73 (Directive 2006/48/EC)	One respondent says since this national discretion is not applied in Ireland it would prefer to transform it into general rule. The great majority support CEBS's proposal. One respondent would like to keep it as a national discretion.	CEBS welcomes the support for its proposal. For clarification CEBS's proposal is actually to keep this provision in the present form (as a national discretion) and to add a binding mutual recognition clause.	No change.
111. CRM, Annex VIII, Part 3, point 75 (Directive	The great majority support CEBS's proposal.	CEBS welcomes the support for its proposal.	No change.

2006/48/EC)			
112. IRB, Annex VII, Part 4, point 44, last sentence (Directive 2006/48/EC)	One respondent advocates the introduction of a mutual recognition clause. One respondent objects strongly to CEBS's proposal and advocates that the provision should be deleted from the CRD, or it should state explicitly that it is up to firms to define the threshold. It is the core business of banks to define risk parameters and the threshold above which an exposure should be considered past due. This threshold will also vary between institutions. It appears inconsistent with the nature of Basel II that CEBS continues to suggest that the authorities should define such a threshold, in isolation from firms' specific models. It is an additional inconsistency that a different threshold could be defined by each authority. CEBS is urged to recognise the core role that this concept plays in institutions' internal risk management systems by leaving it entirely to the interaction between firms and competent authorities. In this context, the respondent notes that divergent approaches are currently also taken by supervisors to the equivalent threshold for the STA approach (Annex VI, Part 1, 61). As, in contrast to the internal models, the STA should be applied in a uniform way to all institutions it would request that CEBS's members agree on a common definition of this threshold. One respondent considers that the existing different thresholds for the "reasonable level of risk" defined by the competent authorities for consolidation purposes are burdensome (in terms of high costs) especially for cross-border institutions and suggests mutual recognition for the different competent authorities' thresholds for consolidation purposes.	Having considered the feedback received from respondents, CEBS considers that there is a need for thresholds and that removing the entire provision would not allow institutions to apply any threshold, and this would be an undesirable consequence. In the absence of a clear agreement on how to move forward, CEBS considers that the best option is to retain this national discretion in its current form. To alleviate any negative effects CEBS will request its members to disclose in the supervisory disclosure framework the thresholds applied by them, which may lead to further harmonisation in practice.	No change.
113. IRB, Annex VII, Part 4, point 48, 1st and 2nd	In several countries (e.g. France), terms of payment are quarterly for real estate operations (credit to retail, to corporates, commercial real estate leasing transactions), one respondent says. To obtain a good estimate of the true situation	CEBS notes the divergent views put forward by respondents and confirms its belief that more time is necessary to assess the	No change.

sentence (Directive 2006/48/EC)	of the debtors, it is necessary that two quarterly instalments or rents remain unpaid, i.e. 180 days. This option is especially necessary since the Member States may diverge in the specific number of days across product lines (which allows for taking into account local conditions on dates of payment or delays of payment by public sector entities, as is the case in France). The respondent therefore wishes this national discretion to become a permanent option. In addition, if the options were deleted when 180 days are necessary to make a good estimate of the true situation of debtors, the default notion would have no more meaning. One respondent stresses that although CEBS recognises the significance of this provision, it does not make a clear statement in favour of a single and harmonised definition of default (especially because the possibility of setting the days of default at a higher number than 90 days is temporary for the simpler approaches, as well as for wholesale exposures under the IRB approach). There is clearly no justification to maintain the possibility of the higher number of days only for the IRB approach. Requiring another review would merely defer the discussion when there is a clear and conceptual solution rather than a question of experience. It advocates that this national discretion be deleted after 2014, and a single 90 days definition of default be consistently applied for all exposures and under all approaches from 2015 onwards. One respondent points out that due to certain specificities for real estate leasing, a higher number of days past due for real estate leasing to PSEs in particular is justified. This discretion should be maintained in its current form (and that national discretion 70 should be aligned with national discretion 113 as it stands today, i.e. no expiry date). One respondent would like to remove the provision from the CRD.	need for this national discretion. Therefore the proposal is to keep the discretion in its current form, with the introduction of a review clause.	
114. IRB, Annex	One respondent agrees with CEBS's proposal.	See national discretion No 113.	No change.

VII, Part 4, point 48, last sentence (Directive 2006/48/EC)	One respondent believes firmly that there cannot be any discrepancies in the definition of default. Until the end of 2014 the choice should be given to institutions to use the definition of default of either the home state or the host state (but not more than the number applicable in the host state). From 2015 onwards, the possibility of setting the default threshold at a higher number than 90 days should be deleted (and the mutual recognition clause will become redundant). One respondent would like to remove the provision from the CRD. Where exposures to counterparties in other Member States are concerned, it should be mandatory for competent authorities to recognise the number of days past due set by the competent authority in the counterparty's home country, one respondent states. This is the only way to avoid further competitive distortion. A binding mutual recognition clause should be introduced and this provision should be deleted by the end of 2014 at the latest.	CEBS notes the divergent views put forward by respondents and confirms its belief that more time is necessary to assess the need for the previous national discretion; therefore the proposal is to keep this mutual recognition clause in its current form.	
115. IRB, Article 85.1 and 85.2 (Directive 2006/48/EC)	Two respondents agree that this provision forms part of the IRBA approval process and that it should be understood as a choice to be made by institutions, and to be reviewed by the competent authorities under Pillar 2. One respondent would like to keep it as a national discretion.	CEBS welcomes the broad support for its proposal. For clarification this provision is not a national discretion but a supervisory decision that is part of the overall IRB supervisory approval process.	No change.
116. IRB, Article 89.1 last sentence (Directive 2006/48/EC)	Two respondents recommend deleting this national discretion, as it is an exception to a general rule. However, if CEBS wishes to maintain it then they would argue that this should be in the form of a general rule. Two respondents would prefer the introduction of a binding mutual recognition clause.	This provision is the mutual recognition clause of provisions 118 and 119. This provision is not related to features of the local market or local laws outside the scope of banking supervision; binding mutual recognition therefore	No change.

		does not apply.	
117. IRB, Article 89.1 (Directive 2006/48/EC) and 118 and 119	One respondent agrees with CEBS's proposal. In the view of two respondents, the current wording of this provision indicates that it is an option given to credit institutions within the normal IRBA approval process. In addition, CEBS's question is not clear to them, as it is their understanding that the choice for institutions applies without any differentiation between all the listed exposure categories. They invite CEBS to confirm their understanding. One respondent would like to keep it as a national discretion.	Since the provision seems to be clear to most respondents CEBS is not proposing any change to it.	No change.
120. Large Exposures, Article 110.3 (Directive 2006/48/EC) and 121, 122 and 123	The great majority of respondents agree that these provisions should be dealt with in the review of the Large Exposures regime.	CEBS welcomes the support for its proposal.	No change.
124. Op Risk, Annex X, Part 3, Point 11 (Directive 2006/48/EC)	One respondent agrees with CEBS's proposal. Two respondents agree with CEBS's analysis (this provision is part of the AMA approval process) and proposal (transform it into a general rule, as the competent authorities retain overall competence to approve the model). However they stress that CEBS should take into account the costs and benefits of the number of national discretions as a whole rather than this individual discretion. In their view the wording proposed by CEBS does not achieve the intended result as the authorities could still not recognise the correlations, even though the institution demonstrates the adequacy of its systems. They propose a new wording: "correlations … shall be recognised as part of the model approval process where credit institutions can demonstrate to the satisfaction of the competent authorities…"	CEBS welcomes the broad support for its proposal. In CEBS's view there is no need to change its drafting proposal.	No change.

125. Securitisation, Annex IX, Part 4, point 43 (Directive 2006/48/EC)	One respondent would prefer to transform it into a general rule. In the view of two respondents CEBS disregards the methodology/ general criteria where it clearly states that where a provision is subject to clear criteria, the authorities' role is to check that the criteria are fulfilled but there is no additional choice on top of that. This is however what the first part the sentence seems to imply and the role of the authorities is also explicitly mentioned in the criteria itself (e.g. (b), "the credit institution shall satisfy the competent authorities…"). The seemingly discretionary part of this provision should therefore be deleted so that it is clear that this provision applies as a general rule. One respondent thinks that all European banks should have the right to assign a derived rating to an unrated position in an ABCP programme provided that the relevant conditions are met. It is then up to the competent authorities to verify compliance with these conditions. CEBS should either change the recommendation into an option for institutions or clarify in its advice that banks may make use of the option if they comply with the associated conditions.	Having considered the respondents' feedback, CEBS considers that in this case the criteria for the supervisory decision are not specific enough to automatically allow banks to assign a derived rating to an unrated position in an ABCP programme (this could become possible if further joint criteria are included in the CRD).	No change.
126. Securitisation, Annex IX, part 4, point 43, last sentence (Directive 2006/48/EC)	One respondent would prefer to transform it into a general rule. For two respondents it is not clear why this provision should be subject to a separate supervisory decision. Where there is no publicly available ECAI assessment methodology it is clear that the criterion cannot be met. The provision should apply as a general rule, to be confirmed by the competent authorities. One respondent suggests the waiver of the requirement for the ECAI's methodology to be publicly available should be applied by all national supervisors in a uniform manner.	CEBS considers that for many of the Member States there is little experience as to what might constitute 'exceptional circumstances' - hence the need to retain the supervisory decision. CEBS believes however, that over time the exchange of experiences and mutual learning among the supervisors on how these structures work will help achieve further convergence.	No change.

127. Securitisation, Annex IX, Part 4, point 58 (Directive 2006/48/EC)	The great majority highlight the divergent application of this provision. They recognise that it is up to the competent authorities to ensure that prudent use is made of this provision, but call on CEBS to enhance practical cooperation with a view to achieving consistency in the application of this and similar provisions.	CEBS welcomes the broad support for its proposal. Member States which have not implemented this provision will be urged to do so as soon as possible.	No change.
128. Securitisation, Article 97.1 (Directive 2006/48/EC)	The great majority agree with CEBS's proposal.	CEBS welcomes the support for its proposal.	No change.
129. Securitisation, Article 97.2 (Directive 2006/48/EC)	The great majority agree with CEBS's proposal. Two respondents suggest that the word "only" be deleted from the current text to clarify this interpretation. One respondent suggests that all competent authorities should implement this provision in a uniform manner.	CEBS welcomes the broad support for its proposal. Member States which have not implemented this provision will be urged to do so as soon as possible.	No change.
130. Securitisation, Article 97.3 (Directive 2006/48/EC)	One respondent welcomes and supports a joint assessment process, but proposes to include a "comply or explain" clause or would ask CEBS to further elaborate on guidelines safeguarding a common approach. Two respondents highlight that the joint process has in practice already worked well, which constitutes an additional reason for setting out this process in its entirety in the legal text. Conceptually, the outcome of this joint assessment process should be binding. One respondent would like to keep it or transform it into a supervisory decision with no additional choice for the supervisors, plus the introduction of a binding mutual recognition clause.	CEBS welcomes the broad support for its proposal. Regarding respondents' request for a binding joint assessment, see CEBS's response on national discretion No 23.	No change.
131. Securitisation,	One respondent welcomes and supports a joint assessment process, but proposes to include a "comply or explain" clause or	CEBS welcomes the broad	No change.

Article 98.1 (Directive 2006/48/EC)	would ask CEBS to further elaborate on guidelines safeguarding a common approach. In the view of two respondents CEBS's proposal goes in the right direction but in order to ensure that the credit quality steps are assigned in all Member States, the joint assessment process must result in a joint outcome that should ideally be binding. One respondent would like to keep it or transform it into a supervisory decision with no additional choice for the supervisors, adding a joint recognition process.	support for its proposal. Regarding respondents' request for a binding joint assessment, see CEBS's response on national discretion No 23.	
132. Securitisation, Article 98.2 (Directive 2006/48/EC)	One respondent welcomes and supports a joint assessment process, but proposes to include a "comply or explain" clause or would ask CEBS to further elaborate on guidelines safeguarding a common approach. Two respondents highlight that this provision should be replaced, together with the previous one, by a full joint assessment process with a binding outcome.	CEBS welcomes the broad support for its proposal. Regarding respondents' request for a binding joint assessment, see CEBS's response on national discretion No 23.	No change.
135. Standardised Approach, Annex VI, Part 1, point 41 (Directive 2006/48/EC) and 133 and 134	One respondent recalls that the industry raised these provisions to point to the very harmful potential for divergence in the assignments of risk weights. It is essential that the assignment of risk weights be the same across all Member States.	In CEBS's view these are general provisions and not national discretions. To ensure a harmonised approach CEBS's proposal is to introduce in the CRD a reference to a joint assessment process as is currently the practice (see national discretions Nos 148 and 149)	No change.
136. Standardised Approach, Annex VI, Part 1, point 49 (Directive	One respondent considers that since this national discretion is not applied in Ireland, it would prefer to transform it into general rule for level playing filed purposes. One respondent supports CEBS's proposal.	In CEBS's view this is a national discretion rooted in local market conditions and should therefore be kept. For level paying field purposes	No change.

2006/48/EC)	While another one favours the introduction of a binding mutual recognition clause. One respondent agrees that the application of this provision depends on local market conditions. However, it suggests turning the provision into a general rule, by requiring that the condition contained in point 48(b) always be dispensed with where exposures are fully and completely secured by mortgages that fulfil the applicable criteria. CEBS's proposal of mandatory disclosure of the application of the provision in the supervisory disclosure framework is helpful, but the respondent also notes that that disclosure must be effective to both provide the necessary clarity for institutions and to support the promotion of a common approach across CEBS's members. Another respondent also agrees that the application of this provision depends on local market conditions and find CEBS's proposal of mandatory disclosure of the application of the provision in the supervisory disclosure framework helpful. In addition it suggests the introduction of a binding mutual recognition clause. From another respondent's viewpoint, where supervisors are satisfied that exposures are fully and completely secured by mortgages fulfilling the applicable criteria, the provision should apply as a general rule. Moreover, CEBS should ensure effective disclosure. The following wording is suggested for point 49: "*Competent authorities ~~may~~ shall dispense with the condition contained in point 48(b) for exposures fully and completely secured by mortgages on residential property which is situated within their territory if they have evidence (…)".* One respondent would like to keep it or transform it into a supervisory decision with no additional choice for supervisors.	CEBS has proposed a binding mutual recognition clause for this national discretion under provision No. 137.	
137. Standardised Approach,	One respondent supports CEBS's proposal, but notes that the proposed treatments under the Standardised Approach and the IRB Approach to mutual recognition of commercial and	CEBS welcomes the broad support for its proposal.	See Advice.

Annex VI, Part 1, point 50 (Directive 2006/48/EC)	residential real estate should be consistent. The great majority support CEBS's proposal. One respondent agrees with CEBS's wording proposal, which implies mutual recognition as a general rule. However it notes that CEBS's classification as an 'option for credit institutions' has already led to misunderstandings, especially in contrast with CEBS's recommendations for national discretions 102 – 105, i.e. the equivalent provisions for the advanced approaches, where CEBS's proposal is for binding mutual recognition. It is the understanding of one respondent that CEBS's proposal would effectively imply mutual recognition as a general rule. However, it point out the inconsistency in wording in comparison to national discretions 103 and 105 (i.e. the equivalent provisions for the Advanced Approaches) where CEBS proposes clear binding mutual recognition. The wording used should be harmonised and recommends that binding mutual recognition be chosen for clarity's sake. One respondent would prefer the introduction of a binding mutual recognition clause.	Taking into account the feedback received, CEBS has clarified in its advice that its proposal is to transform this mutual recognition clause into a binding mutual recognition clause that is in fact an option for credit institutions.	
138. Standardised Approach, Annex VI, Part 1, point 51 (Directive 2006/48/EC)	One respondent considers that since this national discretion is not applied in Ireland it would prefer to transform it into a general rule for level playing filed purposes. One respondent supports CEBS's proposal. Two respondents agree that the application of this provision depends on local market conditions. They welcome CEBS's proposal to require the disclosure of the application of the provision in the supervisory disclosure framework. They agree with the automatic mutual recognition as proposed for national discretion 141, which will become much more effective when supported by full disclosure of the application of national discretion 138.	CEBS welcomes the broad support for its proposal. For level paying field purposes CEBS has proposed a binding mutual recognition clause for this national discretion under provision No 141.	No change.

	It is the view of another respondent that where supervisors are satisfied that exposures are fully and completely secured by mortgages fulfilling the applicable criteria, the provision should apply as a general rule. One respondent would like to keep it or transform it into a supervisory decision with no additional choice for supervisors, and add a binding mutual recognition clause.		
139. Standardised Approach, Annex VI, Part 1, point 52 (Directive 2006/48/EC)	Two respondents do not agree that there should be an additional decision by a national competent authority as this provision already implicitly requires the recognition of collateral by the Finnish authority. They suggest that this national discretion be aligned with national discretion 47 for the IRB approach, implying a general rule (one of the respondents points out this will in fact be an option for credit institutions) where collateral has been recognised as eligible under the Finnish Housing Act. It is the view of another respondent that where supervisors are satisfied that exposures are fully and completely secured by mortgages fulfilling the applicable criteria, the provision should apply as a general rule. One respondent would prefer the introduction of a binding mutual recognition clause.	In accordance with the feedback from respondents, CEBS has clarified its drafting proposal to remove the supervisory decision referring to the eligibility of the shares. However, supervisory authorities will have to assess whether the exposures are *fully and completely* secured.	See advice.
140. Standardised Approach, Annex VI, Part 1, point 53 (Directive 2006/48/EC)	One respondent states that since this national discretion is not applied in Ireland it would prefer to transform it into general rule. Two respondents agree that the application of this provision depends on local market conditions and find CEBS's proposal of mandatory disclosure of the application of the provision in the supervisory disclosure framework helpful. They also agree with the automatic mutual recognition as proposed in national discretion 141. It is the view of another respondent that where supervisors are	In CEBS's view this is a national discretion rooted in local market conditions and should therefore be kept. For level paying field purposes CEBS has proposed a binding mutual recognition clause for this national discretion under provision No 141.	No change.

	satisfied that exposures are fully and completely secured by mortgages fulfilling the applicable criteria, the provision should apply as a general rule. The following wording is suggested for point 53: "~~*Subject to the discretion of the competent authorities,*~~ *Exposures related to property leasing transactions concerning offices or other commercial premises situated in their territories under which the credit institution is the lessor and the tenant has an option to purchase may shall be assigned a risk weight of 50% provided that the exposure of the credit institution is fully and completely secured to the satisfaction of the competent authorities by its ownership of the property".*		
141. Standardised Approach, Annex VI, Part 1, point 57 (Directive 2006/48/EC)	One respondent supports CEBS's proposal, but the proposed treatments under the Standardised Approach and the IRB Approach to mutual recognition of commercial and residential real estate should be consistent. Two respondents support CEBS's proposal. Two respondents agree with the solution proposed by CEBS for point 52, as well as on the automatic mutual recognition proposed here for points 51 and 53. One respondent agrees conceptually on the solution proposed for point 52, as well as on the automatic mutual recognition proposed for points 51 and 53. However, CEBS's proposal does cause confusion in view of the apparent inconsistency between on the one hand, its proposals for national discretions 103 and 105, and, on the other hand, its proposals for national discretions 141 and 143. The outcome should be the same in both cases, i.e. effectively binding mutual recognition. However, for the sake of clarity the respondent suggests that the proposed wording as well as the substantiation of the arguments be aligned for both the advanced approaches and the STA.	CEBS welcomes the broad support for its proposals. CEBS has clarified its advice to provide for further consistency.	See Advice.
142. Standardised Approach,	One respondent states that since this national discretion is not applied in Ireland it would prefer to transform it into general rule for level playing filed purposes.	CEBS welcomes the broad support for its proposal.	No change.

Annex VI, Part 1, point 58 (Directive 2006/48/EC)	One respondent supports CEBS's proposal. The great majority of respondents agree with CEBS's proposal on mandatory disclosure of the application of this provision in the supervisory disclosure framework, combined with automatic mutual recognition under point 60 (national discretion143). One respondent would like to keep it or transform it into a supervisory decision with no additional choice for supervisors.		
143. Standardised Approach, Annex VI, Part 1, point 60 (Directive 2006/48/EC)	One respondent supports CEBS's proposal, but the proposed treatments under the Standardised Approach and the IRB Approach to mutual recognition of commercial and residential real estate should be consistent. Two respondents support CEBS's proposal. The great majority agree with CEBS's proposal to convert point 60 into an automatic mutual recognition clause linked to point 58.	CEBS welcomes the support for its proposal. Taking into account the feedback received, CEBS has clarified in its advice that its proposal is to transform this mutual recognition clause into a binding mutual recognition clause that is in fact an option for credit institutions.	See Advice.
144. Standardised Approach, Annex VI, Part 1, point 77(a) (Directive 2006/48/EC)	Two respondents agree that no change is necessary in the wording of the CRD, but stress that this is an option given to institutions. The role of the authorities is to confirm that the applicable criteria are met. This provision was raised in the context of the national discretions, because supervisors often interpret this provision as a choice given to them.	CEBS welcomes the support for its proposal. Member States which have not implemented this provision will be urged to do so as soon as possible.	No change.
145. Standardised Approach, Annex VI, Part 1, point 78 (Directive 2006/48/EC)	One respondent welcomes and supports a joint assessment process, but proposes to include a "comply or explain" clause or would ask CEBS to further elaborate on guidelines safeguarding a common approach. For the great majority it is not clear why a third country CIU should be recognised in some Member States, but not in others. Mutual recognition should therefore either be binding, or a joint	CEBS welcomes the broad support for its proposal. Regarding respondents' request for a binding joint assessment, see CEBS's response on national discretion No 23.	No change.

	assessment process be established that results in a joint decision. One respondent would prefer the introduction of a binding mutual recognition clause (replace "may" by "shall").		
147. Standardised Approach, Article 81.2 (Directive 2006/48/EC) and 146	Two respondents agree with CEBS that provisions (146) and (147) are not national discretions, but general rules. In order to clarify that this is a general rule always to apply where an ECAI has been recognised, they suggest deleting the word "only" from both provisions.	CEBS welcomes the support for its proposal. The wording clarification was not deemed necessary.	No change.
148. Standardised Approach, Article 81.3 (Directive 2006/48/EC)	One respondent welcomes and supports a joint assessment process, but proposes to include a "comply or explain" clause or would ask CEBS to further elaborate on guidelines safeguarding a common approach. The great majority advocate that mutual recognition should be binding or that the joint assessment process should explicitly include a joint decision. One respondent would prefer the introduction of a binding mutual recognition clause (replace "may" by "shall").	CEBS welcomes the broad support for its proposal. Regarding respondents' request for a binding joint assessment, see CEBS's response on national discretion No 23.	No change.
149. Standardised Approach, Article 82.2 (Directive 2006/48/EC)	One respondent welcomes and supports a joint assessment process, but proposes to include a "comply or explain" clause or would ask CEBS to further elaborate on guidelines safeguarding a common approach. The great majority advocate that mutual recognition should be binding or that the joint assessment process should explicitly include a joint decision. While another respondent would prefer the introduction of a binding mutual recognition clause (replace "may" by "shall").	CEBS welcomes the broad support for its proposal. Regarding respondents' request for a binding joint assessment, see CEBS's response on national discretion No 23.	No change.

150. Transitional provisions, Article 154.1, second paragraph (Directive 2006/48/EC)	The great majority agrees with CEBS's proposal.	CEBS welcomes the support for its proposal.	No change.
151. Transitional provisions, Article 154.7, first two sentences (Directive 2006/48/EC)	The great majority agree with CEBS's proposal. One respondent points out that in several countries (e.g. France), terms of payment are quarterly for real estate operations (credit to retail, to corporates, commercial real estate leasing transactions). To make a good estimate of the true situation of the debtors, it is necessary that two quarterly instalments or rents remain unpaid, i.e. 180 days. This option is especially necessary since the Member States may diverge in the specific number of days across product lines (which allows taking into account local conditions on dates of payment or delays of payment by public sector entities, as it is the case in France). The respondent therefore wishes this national discretion to become a permanent option, as is presently the case for option of point 48, part 4, annex VII of directive 2006/48. In addition, if the options were deleted when 180 days are necessary to make a good estimate of the true situation of debtors, then the default notion would have no further meaning. One respondent believes that this provision should be maintained beyond its current expiry date. A higher number of days past due for leasing to corporates is useful in certain countries.	CEBS welcomes the broad support for its proposal. CEBS does not consider it appropriate to reopen the negotiations on the transitional provisions and advocates letting them expire. To introduce a review clause is outside the scope of the national discretions exercise.	No change.
152. Transitional provisions, Article 154.7, last sentence	The great majority agrees with CEBS's proposal.	CEBS welcomes the support for its proposal.	No change.

(Directive 2006/48/EC)			