



**Committee of European
Banking Supervisors**

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CP18@c-eba.org

Consultation Paper (CP 18) on CEB's technical advice to the European Commission on Options and National Discretions

Ladies, Gentlemen,

The European Association of Co-operative Banks (EACB)¹ welcomes opportunity to comment on CEBS's technical advice to the European Commission on options and national discretions.

This matter is of crucial importance for many of our member organisations. Accordingly, we are available at any time for more detailed comments on the matter in question.

Yours sincerely,

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General Manager

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Head of the Legal Department

¹ The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4,500 locally operating banks and 60,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 130 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent million members and 700,000 employees and have a total average market share of about 20%.



I. GENERAL REMARKS:

EACB welcomes that CEBS proposals reduce a considerable amount of the existing options and discretions. The application of so called “supervisory decisions” and the mutual recognition of certain options are of particular importance in cases of market particularities. Such open perspective helps to avoid any impression among banks operating on a national level that they could only lose and that the exercise is conducted to the exclusive benefit of international banks.

II. SPECIFIC OPTIONS AND NATIONAL DISCRETIONS:

- ***Articles 80.7 and 80.8 CRD (Exemption of intra-group exposures from risk-weighted exposures and treatment of exposures to a counter-party which is member of the same institutional protection scheme)-ND 20 and 21:***

CEBS states that Article 80.7 and 80.8 CRD are not intended to be a national discretion but a supervisory decision to be applied on a case by case basis that should have been implemented by all Member States. Regarding Article 80.7 CRD, CEBS argues that the Directive text could be changed to clarify that the exemption from the requirements of Article 80 CRD depend on the supervisory judgment of the fulfillment of the conditions as set out in the provision (i.e. if the competent authorities are satisfied that the conditions are met the exemption would be granted to that institution).

EACB would like to remember that both provisions were the result of a long-sought political compromise and as such represent a part of the *acquis communautaire*. They are both crucial for co-operative banks.

Concerning Article 80.7, EACB still prefers the change of its provisions into a general rule, as ECSAS mentioned in responses to CEBS’s public questionnaire in 2007 and as expressed during regular meetings with CEBS since then.

However, since CEBS has specified in his consultation paper of 22 May 2008² that “transform in a general rule is no longer used as a proposed solution”, it is important to include Article 80.7 in the first category of supervisor’s decision³: “where 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)”. Providing this provision, EACB agrees with CEBS proposal.

- ***Annex VI, Part I, point 67 (regulatory high risk categories- lower risk weight due to value adjustments)-ND 33:***

CEBS argues that though this national discretion is phrased like a supervisory decision, it can only be used across the board, and thus qualifies as a national discretion. The choice is therefore either to remove the national discretion if the more favorable treatment is not justified, or to grant it to all credit institutions by deleting the discretion from the provision. For this reason, CEBS proposal is to remove the provision from the CRD with an appropriate short transitional clause.

² Page 8, paragraph 28 of CEBS Consultation Paper of 22 May 2008.

³ Page 8, paragraph 28, c) i) of CEBS Consultation Paper of 22 May 2008.



Nevertheless, EACB advocates for keeping this national discretion in its present form. In our opinion, it is expedient to give financial institutions positive incentives in order to set up provision reserves for possible future losses.

- ***CRM, Annex VIII, Part 1, Point 21 (Other physical collateral)-ND 49:***

CEBS states that the analysis shows that the provision is quite important in a few Member States and proposes to keep the national discretion as it is but add a non-binding mutual recognition clause.

EACB welcomes this proposal but argues that where the two conditions are fulfilled, the collateral shall be recognized as a general rule or at least that the mutual recognition clause should be binding. Furthermore, in case that the collateral is not recognized, EACB advocates for the introduction of a “comply or explain” clause.