



Mr. Roel Theissen
Chair
CEBS Working Group on
National Discretions

Brussels, 14 August 2008

CDN/LDR (0365/08)

Ref. Consultation paper on CEBS' technical advice to the European Commission on options and national discretions

Dear Mr. Theissen,

The ESBG is grateful for having the possibility to comment on CEBS' consultation document on options and national discretions in the Capital Requirements Directive. The ESBG would also like to use this occasion to express its appreciation for having been invited to participate in the group of industry experts assisting CEBS in its work on this topic.

As a matter of principle, the ESBG welcomes the reduction of the number of options and national discretions in the Capital Requirements Directive and believes that this is a way to create more supervisory convergence in the EU. Options and national discretions are frequently creating distortions to competition as well as supplementary administrative burden, and often hamper a consistent approach to Pillars 2 and 3. However, the ESBG upholds that there are also some cases where the existence of local market conditions or legislative specificities justify different approaches so that certain options and national discretions should be maintained.

The ESBG welcomes the regular reference by CEBS to the results of the impact assessment, which demonstrates CEBS' continuous commitment to the 'better regulation agenda'. However, the ESBG recalls that such a commitment should be underpinned by systematic substantial scrutiny of potential impacts and thorough cost-benefit analysis, which are not always straightforward to follow in the case of CEBS' impact assessment on options and national discretions.

Regarding the overall approach the ESBG appreciates that CEBS' efforts are translated into an ever more consistent position. This is particularly due to the refined Glossary and its consequent use throughout the paper. Also, we deem the high level considerations particularly important for ensuring a coherent approach. However, we observe that, despite this theoretical underpinning, for its proposals CEBS has chosen to rely mainly on a pragmatic case-by-case approach, which, while bringing about practical solutions that constitute real improvements, nevertheless falls short of addressing some important inconsistencies.





Furthermore, the ESBG is critical towards some of the arguments used by CEBS for justifying a proposed solution. For instance, the ESBG finds it problematic to argue generically that a national discretion can be changed only as part of the future overhaul of a certain subject matter. Nor does the ESBG agree that the mere lack of practical experience is sufficient for postponing endeavours to find constructive solutions for options and discretions whose application triggers important distortions.

Also, the ESBG finds that the solution proposing 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. As long as there are objective criteria it should be ensured that the discretion of the supervisory authority is limited to the assessment of the fulfilment of these criteria. On the contrary, where no such objective criteria can be identified, CEBS should focus on determining how national authorities should collaborate in establishing a common understanding.

Last but not least, the ESBG welcomes the inclusion of “joint assessment processes” as a possible solution, as it involves strengthened cooperation and coordination among national supervisory authorities. The ESBG would find it helpful if it were explicitly requested that such processes should strive for the adoption of joint decisions.

To conclude, in the ESBG’s view the proposals put forward by CEBS go in principle in the right direction. However, in the case of certain options and national discretions the ESBG considers a different solution to be more appropriate and adequate. As regards concrete suggestions we would like to refer to the detailed proposals for changes described in the EBIC response to CEBS’ paper.

The ESBG stands ready to discuss this matter further with you and the Secretariat of the ESBG remains at your disposal for any questions you may have in relation to this issue.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Chris DE NOOSE', is positioned above the typed name.

Chris DE NOOSE
Managing Director