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**ITEM 3B OF THE AGENDA: LATEST DEVELOPMENTS IN BASEL II AND CAPITAL
REQUIREMENTS DIRECTIVE**

Please find enclosed (enclosure 1) the FBE summary of objectives & priorities on the Capital Requirements Directive implementing the new BASEL II framework in the EU, issued by the Federation in April 2005.

The latest developments regarding the Capital Requirements Directive in the European Parliament are available from the enclosed (enclosure 2) copy of the latest FBE Secretariat note to the Executive Committee.

Enclosures: 2

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European Banking Federation

FBE Report

April 2005

DIRECTIVES OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

Re-casting Directive 2000/12/EC of the European Parliament & of the Council of 20 March 2000 relating to the taking up & pursuit of the business of credit institutions and Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms & credit institutions.

THE EUROPEAN BANKING FEDERATION'S SUMMARY OF OBJECTIVES & PRIORITIES ON THE CAPITAL REQUIREMENTS DIRECTIVE IMPLEMENTING THE NEW BASEL FRAMEWORK IN THE EU

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The European Banking Federation (FBE) is the voice of the European banking sector. It represents the interests of over 4500 European banks, large and small, with total assets of more than EUR 20 000 billion and over 2.3 million employees



Fédération Bancaire Européenne
European Banking Federation

The European Banking Federation's Summary of Objectives and Priorities on the Capital Requirements Directive Implementing the New Basel Framework in the EU

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The European Banking Federation's Summary of Objectives and Priorities on the Capital Requirements Directive Implementing the New Basel Framework in the EU

The new Basel framework is intended to enhance consumer protection, reinforce financial stability and promote the global competitiveness of the European industry. It will be implemented in the EU by recasting Directive 2000/12/EC covering the pursuit of the business of credit institutions and Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions.

The following paper is a short summary of the FBE's key concerns. For more detailed analysis, and for proposed amendments please see the attached briefing pack. The FBE will also provide a package of technical amendments to the Articles and clarifications.

I Focus on delivery

The emphasis on improved risk management in the proposed recasting Directive will lead to a better targeting of banks' capital in the EU. The objective during the legislative process, and going forward, must be to agree **a flexible and high quality Directive** that is **consistent with the Basel framework** and encourages **convergent application across the EU**.

A **flexible Directive** is necessary to ensure that the capital requirements framework is able to keep pace with developments in industry practice, markets and supervisory need. This will contribute to protecting the interests of depositors and borrowers and ensuring that the EU maintains its reputation as a best practices market.

The European Commission's approach of defining enduring principles and objectives in the Articles of the Directive and technical measures in the Annexes is an effective way to deliver the necessary flexibility.

The Commission has successfully delivered a proposal which is **broadly consistent with the international Basel framework** (while taking appropriate account of EU specificities). Parallel treatment is essential to reflect the global nature of banking and investment business and ensure a level playing field for both industry and consumers.

II Delivering efficient banking supervision in the EU and globally – Consolidated Supervision

The FBE believes that consolidated supervision is the only mechanism which can deliver an efficient supervisory environment for banks active on a cross-border basis in the EU. The Commission's proposal lays some of the necessary groundwork but fails to deliver this principle.

It is a paradox that the EU, with a clear objective of a unified financial market, should choose a fragmented approach to banking supervision, burdening banks with multiple reporting requirements and additional capital constraints.

II.1 Level of application of capital requirements (Pillar 1)

Article 68 of Act 1 requires credit institutions to comply with own funds requirements on an individual basis.

Article 69 gives Member States discretion to waive this requirement for the subsidiaries in the same Member State as the parent company, subject to the banking group meeting stringent conditions. Consolidated supervision is, therefore, impossible at EU level.

Furthermore, the waiver in Article 69 does not apply to the parent company as it currently does in Article 57(2) of Directive 2000/12/EC. This restriction would result in the parent company producing both entity and consolidated level requirements. The entity level requirements for the parent company would not serve any prudential purpose and would result in redundant capital being held.

Impact

The discretionary waiver would lock in an unlevel playing field between Member States and would not be consistent with the Single Market. The distortion of competition arising from the application of different rules is a major source of cost and complexity in implementation for international groups. It leads to an unlevel playing field both within the EU and on a global basis.

Furthermore, the Basel framework is applied on a consolidated basis. This approach not only eliminates double gearing but also takes full account of risk management practices, which are increasingly centralised and integrated. The CRD is applied at the level of each institution. It is, therefore, the source of major inconsistency with the international framework and a significant competitive distortion with the rest of the world.

Solution

The reason for the Commission's proposed approach is the fragmented legal framework both at national and international level within the EU. Therefore, the impediments to consolidated supervision (the fragmented supervisory regime, liquidity risk management, deposit guarantee schemes, the lender of last resort, etc.) must be treated through harmonisation in a defined timeframe.

The FBE believes that, in order to achieve a true Single Market in financial services, it is essential to remove these impediments. The Commission and Member States must be required to review the level of application of the rules in the CRD by the end of 2009 at the latest with the intention of replacing the waiver with a consistent rule at the EU level for all Member States.

The FBE's proposal is to amend Article 69 so that the current waiver is not restricted to individual Member States and also includes the parent company. The national discretion in Article 69 will then represent an imperfect transitional solution which will allow Member States to restrict consolidation to within the Member State until such time as a consistent solution is found.

II.2 The Supervisory Review Process under Pillar 2 and Market Discipline under Pillar 3

The FBE welcomes the development of the established role of the consolidating supervisor in Articles 129-132 of the recasting Directive. The approach respects the role of national competent authorities whilst providing a single point of application (e.g. for approval to adopt the Internal Ratings Based Approach for credit risk) for institutions.

The FBE firmly believes, however that the role of the consolidating supervisor should be extended to the Supervisory Review Process (SRP) under Pillar 2 and to Pillar 3 disclosures. Both the SRP and market related disclosures should reflect the global risk

position of the group and should, therefore, be applied at the top consolidated level in each group in the EU.

In the Council's text of December, the proposed Recital 12A reflects the desire of certain Member States to apply superequivalent rules regarding certain provisions in the Directive. While the FBE accepts that this is the prerogative of national authorities, this Recital should not under any circumstances include reference to Articles 75 and 123 in this recital. The reference to Article 75 in Recital 12(a) could be interpreted as an option for Member States to impose a ratio higher than 8% on the credit institutions operating in their countries. This would impose unnecessarily fragmented systems on those banks operating on a cross-border basis.

Reference to Article 123, Pillar 2 requirements, in the Recital effectively creates a loophole to Article 129 which allows the host supervisor to impose additional requirements in Pillar 2 to potentially supplement those capital requirements it does not have the authority to require under Pillar 1. We do not believe that there is a prudential justification for such a proposal and therefore recommend deletion of the reference.

Furthermore, the positive impact of diversification, particularly geographical diversification, may totally or partially off-set any additional capital charges imposed by supervisors. Recognition of diversification is treated below in more detail.

Impact

If the role of consolidating supervisor is not extended to Pillars 2 and 3, subsidiaries of a group will be subject inconsistent supervisory treatment across the EU and the objective of enhancing the understanding of a group's overall risk profile will be jeopardised. As the proposal currently stands, the Institution's Capital Adequacy Assessment Process (ICAAP) will take place at the group level whilst the Supervisory Review and Evaluation Process (SREP) will take place at solo entity level. There is an illogical mismatch in this approach which is entirely contrary to good supervisory practice. The ICAAP takes into account correlation, diversification and, most importantly, concentration effects which have a significant outcome on the overall model. While the FBE supports the role of regulators in protecting the rights of depositors and investors, in many instances there are no (or few) third party investors or depositors in foreign subsidiaries as the parent bank provides the funding.

Solution

The FBE's objective is that all three Pillars of the Directive should be applied at the consolidated level. As this is not currently possible an interim solution must be found to ensure the prudential objectives of Pillars 2 and 3 are met. Thus, the consolidating supervisor model in Article 129 should be extended to Pillars 2 and 3 taking account of the important role of the host supervisors.

The Home Supervisor should coordinate both the Pillar 2 activities and reporting under Pillar 3 with the host supervisors and ensure that they are kept informed and provided with a main point of contact for the banking group.

II.3 Intra-group exposures (IGEs) within banking groups applying risk management at the consolidated level

In the proposal for a Directive, Member States have discretion to set the risk weight for IGEs (Article 80(7) and Article 89(1-e) of Act 1).

A 0% risk weight may be applied to exposures to a counterparty which is the parent undertaking of a credit institution, its subsidiary or a subsidiary of its parent undertaking. The counterparty must be established in the same Member State as the credit institution.

Impact

A 0% risk weight is a correct reflection of the risk associated with both domestic and cross-border IGEs. There has never been a default on an IGE even in situations where banks have pulled out of foreign subsidiaries.

The discretionary waiver leads to competitive distortions in the Single Market. Credit institutions from Member States not applying the option are required to hold capital against IGEs whereas institutions from other Member States can 0% risk weight them.

Applying a risk weight to IGEs would not only result in a massive cost to the banking industry, it could also impact on the calibration of the Accord given that IGEs were not included in the Quantitative Impact Studies. The QISs were calculated on a consolidated basis. An example of the massive potential costs resulting from the requirement to risk weight IGEs is that in one cross-border banking group alone IGEs eliminated in the consolidation process total €610 billion. The exposures of the parent company to its foreign subsidiaries amount to €90 billion which means that €1.5 billion of additional capital may be required at parent company level.

Limiting the 0% risk weighting to counterparties within the same Member State would be inconsistent with the Single Market and would have no prudential justification. Intra-group exposures to counterparties in another Member State have the same risk profile as exposures to counterparties within the same Member State.

Solution

The problem of the risk-weight of IGEs is a direct result of the entity level of application of the Directive. Until the level of application can be resolved, the waiver in Article 80(7) should not be in the form of a discretionary waiver but should be a consistent rule across the EU in line with the Single Market. A 0% risk-weighting should apply to all EU intra-group exposures, both domestic and cross-border, within consolidated and centrally managed banking groups when the criteria set out in Article 80(7) are met.

II.4 AMA approach for Operational Risk

In Article 105(4) Member States have discretion to allow credit institutions to meet the requirements for the Advanced Measurement Approach at the top level of the EU Group.

Impact

Application of the AMA approach at the consolidated group level within the EU is in line with the business lines approach to operational risk management put in place by the European banking industry. It would be impossible for banks to apply AMA at solo level. Operational risk is a new element of the framework and the data requirements necessary at solo level can simply not be fulfilled. Furthermore, banks have already made significant investment in group level applications.

Solution

In the absence of a consolidated level of application, AMA should be applied at the top level of the EU group if the conditions set out in Annex X, Part 3 are met by the institution

in particular if there is adequate distribution of operational risk capital throughout the group.

III National discretions and the Level Playing Field

The proposal for a Directive currently contains 143 national discretions, 23 of which have been identified by the Committee of European Banking Supervisors for removal.¹ National discretions are contrary to the objective of a Single Market and, depending on their application, will either lead to unlevel playing fields within specific European markets, or to the need for banking groups to implement different approaches across jurisdictions.

The FBE understands that a limited number of national discretions are currently considered necessary in order for the proposed Directive to be transposed in the 25 Member States. The FBE firmly believes that all national discretions should either be removed from the proposed Directive or converted into a different type of discretion (option for credit institution, application by the competent authority of the credit institution, mutual recognition) and removed in a defined timeframe except in the limited number of cases where they are necessary to cope with traditional specificities of Member State markets.

The FBE has carried out extensive work on classifying national discretions and will continue to cooperate closely with CEBS to ensure speedy convergence in the implementation of the Directive.²

IV Keeping pace with risk management practices and market developments

IV.1 Ongoing Basel/IOSCO working groups – The Trading Book Review

The Basel Committee is undertaking jointly with the International Organisation of Securities Commissions (IOSCO) a review of certain issues: downturn LGDs, counterparty risk, the short-term maturity adjustment and specific risk in the trading book. The FBE believes the conclusions of the Trading Book Review should be incorporated into the Directive as soon as they are of sufficient quality to be practicable. This may take more time in the case of the specific risk in the trading book than for the treatment of counterparty risk, short-term maturity adjustment and double default. For this reason the FBE believes that it is essential to separate out risk in the trading book from the other issues.

The FBE understands that the results of the Trading Book Review will be highly technical and for this reason supports the work of ISDA and LIBA in this area. However, we feel it is nonetheless important that the conclusions for counterparty risk, the short-term maturity adjustment and double-default should be incorporated into the Directive before its adoption. We therefore urge the institutions to cooperate to find a means of achieving this goal. A delay in writing the Trading Book rules into European legislation would leave all European banks at a global disadvantage.

IV.2 Recognition of diversification

The FBE regrets that there is no recognition of diversification effects in the recasting Directive. When evaluating regulatory capital requirements diversification, particularly geographical diversification, plays a key role:

¹ http://www.c-ebs.org/advice/ND_full.xls

² FBE spreadsheet on national discretions available on request

- It is one of the key principles in risk management;
- Portfolio credit tools widely used by main entities show and quantify geographical diversification as the main factor of diversification making it a crucial factor for determining economic capital;
- Diversification recognition is an existing practice in market risk models and will be allowed for operational risk AMA at consolidated level.

In Annex XI of the recasting Directive, concentration is taken into account by supervisors when assessing an institution's risk profile. The FBE does not feel that it is a fair approach to take the negative implications of concentration into account whilst ignoring the positive impact of diversification.

CONSOLIDATION REQUIREMENTS

The Level of Application of the Rules

Issue

- The provisions relating to the level of application of the capital adequacy rules in the Directive do not deliver full consolidated supervision which is the only mechanism for efficient supervision of cross-border banks in the EU.
- The national discretion in Article 69 will result in a significant level playing field issue in Europe.
- The current proposal is a step backwards from Directive 2000/12/EC by not applying the waiver to the parent company.

Objective

- Require a review by the Commission and Member States of the level of application in Articles 68 and 69 before the end of 2009.
- Remove the restriction of the waiver to within a Member State to allow flexibility for supervisors at a later stage.
- Apply the waiver to the parent entity.

Justification

- Application of the rules at the consolidated level gives supervisors a clear understanding of a group's risk profile, and is consistent with the centralised risk management practiced in cross-border banking groups. The failure of the Commission to follow the consolidated level approach of the Basel Committee will result in significant competitive distortions both within the EU and globally.
- The Commission's decision to apply the rules on a solo entity basis in the Directive is based on the fragmented nature of supervision in the EU. The ultimate objective should be to achieve consolidated supervision which is in the interests of depositors and borrowers and is in line with the Single Market.
- The Commission has committed to reviewing the impediments to cross-border activities as part of its post-FSAP agenda. The FBE, therefore, believes that the Council and Commission should be required to review the level of application of the rules before the end of 2009 when the impediments will have been tackled.
- The Article 69 waiver should not be restricted to within a Member State. Given the current legal impediments, the national option (which should only remain until such time as consolidated supervision can be achieved) will provide Member States with the necessary flexibility to move towards consolidated supervision even before the Directive is reviewed. This would be in line with the objective of ensuring that legislation is able to remain in line with market realities.
- Furthermore, the waiver should be extended to the parent company as is currently the case in Directive 2000/12/EC, Article 52(7). The current proposal would result in both entity and consolidated level requirements which would not be prudentially justified and which would result in redundant capital being held.

Background

1. Article 68 of Act 1 of the proposed recasting Directive requires credit institutions to comply with own funds requirements on an individual basis.
2. Article 69 gives Member States discretion to waive this requirement for the subsidiaries of an institution in the same Member State, subject to the group meeting stringent conditions. It does not, however, extend this exemption to the parent company.
3. The waiver to apply the requirements of the Directive on a solo basis should not be restricted to the Member State. The flexibility to do so is available through the national discretion.

DRAFT AMENDMENT

Article 69

1. The Member States may choose not to apply Article 68(1) **to any subsidiary of a credit institution**, where **both** the subsidiary and the credit institution are subject to authorisation and supervision **by the Member State concerned, and the subsidiary is included** in the supervision on a consolidated basis of the credit institution which is the parent undertaking, and all of the following conditions are satisfied, in order to ensure that own funds are distributed adequately among the parent undertaking and the subsidiaries:

(a) there is no current or foreseen material or legal impediment to the prompt transfer of own funds or repayment of liabilities by its parent undertaking;

(b) **its** parent undertaking **is committed to an unconditional, explicit and irrevocable obligation to transfer own funds to the subsidiary and meet its liabilities**, or the risks in the subsidiaries are of negligible interest;

(c) the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary;

(d) the parent undertaking has the right to appoint or remove a majority the members of the management body of the subsidiary.

1. The Member States may choose not to apply Article 68(1) **to a credit institution or to any subsidiary of a credit institution**, where **[1 word deleted]** the subsidiary and the credit institution are subject to authorisation and supervision **by a Member State, and the credit institution and its subsidiary are** included in the supervision on a consolidated basis of the credit institution which is the parent undertaking, and all of the following conditions are satisfied, in order to ensure that own funds are distributed adequately among the parent undertaking and the subsidiaries:

(a) there is no current or foreseen material or legal impediment to the prompt transfer of own funds or repayment of liabilities by its parent undertaking;

(b) **either the** parent undertaking **satisfies the competent authority regarding the prudent management of the subsidiary and has declared, with the competent authority, that it guarantees the commitments entered into by the subsidiary**, or the risks in the subsidiaries are of negligible interest;

(c) the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary;

(d) the parent undertaking has the right to appoint or remove a majority **of** the members of the management body of the subsidiary.

2. The Member States may exercise the option provided for in paragraph 1 where the parent undertaking is a financial holding company set up in the same Member State as a credit institution, provided that it is subject to the same supervision as that exercised over credit institutions, and in particular to the standards laid down in Article 71(1).

2. The Member States may exercise the option provided for in paragraph 1 where the parent undertaking is a financial holding company set up in the same Member State as a credit institution, provided that it is subject to the same supervision as that exercised over credit institutions, and in particular to the standards laid down in Article 71(1).

Justification

The proposed conditions are stricter than those currently in force through Article 52(7) of Directive 2000/12/EC. Consolidated supervision should be the ultimate objective. Therefore, by applying the waiver at the level of the EU but leaving the national discretion in place, Member States will have the flexibility to restrict the waiver to the national level until such time as the Directive is reviewed and consolidated supervision is delivered. The waiver must be extended to the parent company to prevent duplicative rules being applied at consolidated level.

Recital (11A)new

Due to the legal impediments both at a national and cross-border basis at the time of drafting this Directive, it is not possible to apply the Directive at the level of the consolidated undertaking in Europe. As evolution in the directive of consolidated supervision is necessary to deliver a coherent framework for credit institutions active on a cross-border basis in line with the achievement of the internal market. The ultimate objective must be to deliver full application of the rules on a consolidated basis once the obstructive differences between Member States as regards the rules to which these institutions are subject have been removed. It is the intention of the Commission to remove those impediments as part of its Forward Looking Agenda before the end of 2009.

Article 156(2) new

The Commission, in cooperation with Member States, shall review the level of application of the rules in Title V, Chapter 2, Sub-Section 1, Articles 68 and 69 and consolidated supervision along the lines of Article 129 and shall make appropriate proposals to deliver supervision on a consolidated basis in line with Recital 11A(new).

Justification

The proposal for a Directive currently applies the rules at solo entity level. This reflects the fragmented nature of supervision in the EU. As the ultimate objective of the Directive should be consolidated supervision in line with the Single Market, the Commission should seek to eliminate the obstacles to consolidated supervision as part of its forward agenda. The level of application of the rules in the Capital Requirements Directive must be reviewed before the end of 2009 by the Commission and the Member States.

SUPERVISORY COOPERATION – EXTENSION OF THE CONSOLIDATING SUPERVISOR MODEL TO PILLARS 2 & 3

Issue

- The consolidating supervisor model in Article 129 is welcome and the FBE supports it. However, industry believes that it is too limited to deliver a coherent supervisory framework in the EU.

Objective

- Extend the role of the consolidating supervisor to Pillars 2 and 3 while acknowledging the role of the host supervisors.

Justification

- The increasing degree of cross-border business and the centralisation of risk management within cross-border groups reinforce the need for improved coordination and cooperation amongst national supervisory authorities in the EU.
- The FBE welcomes the development of the established role of the consolidating supervisor in Articles 129-132 of Act 1 of the recasting Directive. The approach respects the role of national competent authorities whilst providing a single point of application (e.g. for approval to adopt the Internal Ratings Based Approach for credit risk) for institutions.
- A single point of contact is necessary to support the Single Market and to maintain the competitive position of the European industry in the global market.
- The Commission's approach also promotes cooperation by encouraging competent authorities to work in full consultation when determining applications. This enhanced coordination between national competent authorities should help to resolve home/host issues.
- However, the FBE believes that the role of the consolidating supervisor should be extended to the SRP under Pillar 2 and to disclosure requirements under Pillar 3.
- The proposed recasting Directive leaves open the possibility for Member States to apply the SRP at the level of each individual entity. This would result in competent authorities having a view of the position in one part of the group, but no overall view. This would not be interests of depositors and borrowers.
- Applying the SRP at individual entity level would also be inconsistent with credit institutions' best risk management practice – institutions take a view across the group – and would increase costs without improving the quality of prudential supervision. It would also result in subsidiaries of the group being subject to inconsistent treatment across the EU, contrary to the delivery of Single Market objectives.
- The Institutions Capital Adequacy Assessment Process is carried out at the group level and takes account of correlation, diversification and concentration effects which have a significant impact on the calculation of capital. The fact that the Supervisory Review and Evaluation Process takes place at the solo entity level will result in an illogical mismatch.

- The FBE accepts that competent authorities must be in a position to fulfil their legal responsibility for supervision, but this could be delivered by extending the role of the consolidating supervisor to applying the SRP. This would enhance the quality of prudential supervision whilst respecting authorities' legal position.
- The recasting Directive requires a credit institution subject to consolidated supervision to comply with conditions to ensure that own funds are distributed adequately among the parent undertaking and the subsidiaries. These conditions provide the necessary safeguards for the adequacy of own funds to be assessed at the level of the group by the consolidating supervisor.
- Furthermore, regarding Pillar 3 the objective of market discipline can not be met unless the disclosures of the institution reflect the risk profile of the group as a whole and the processes and mechanisms to manage risk at a group level.

Background

1. Articles 129-132 of Act 1 of the proposed recasting Directive develop the established role of the consolidating supervisor.
2. Article 129 requires that:
 - an application by an EU group (e.g. to apply the IRB Approach) need only be submitted to the competent authority responsible for supervision of the group on a consolidated basis;
 - competent authorities are to work in "full consultation" when determining applications submitted by an EU group;
 - written arrangements shall be in place between the consolidating (or lead) supervisor and other supervisors on coordination and cooperation arrangements;
 - the consolidating supervisor shall supply information to other competent authorities in other EU Member States on the "implementation of approaches and methodologies";
 - the competent authorities shall in a single document agree, within 6 months, their "determination" on the application;
 - in the absence of a "determination" within 6 months, the consolidating supervisor shall "make its own determination on the application".
3. Article 123 requires institutions to have sound, effective and complete risk management systems and processes. Articles 68(2) and 71(1) permit this requirement to be met at the level of the consolidated group. Article 69 sets conditions for a group subject to consolidated supervision to ensure that own funds are distributed adequately among the parent undertaking and the subsidiaries.
4. Article 124 requires supervisors to review institutions' arrangements, strategies, processes and mechanisms, and evaluate the risks to which credit institutions are or might be exposed against criteria in Annex XI. The scope of the review and evaluation "shall be the requirements of this Directive" (Article 124(2)). Articles 68 to 72 suggest that this means at the level of each individual credit institution unless the waivers permitted apply.

5. Article 136 allows competent authorities to apply sanctions to any credit institution that does not meet the requirements of the Directive. The sanctions include “a specific own funds requirement in excess of the minimum” (Article 136(2)).
6. The result is that the ability of institutions to meet the requirements at group level is negated by the ability of competent authorities to apply the review and evaluation process (and any subsequent sanctions) at the level of the individual credit institution.
7. Article 129(1) should be amended to bring the supervisor’s review and evaluation under Article 124 within the responsibility of the consolidating supervisor.
8. Article 145 requires banks to comply with the disclosure requirements under Pillar 3 of the Directive. These disclosures must be made at consolidated level if they are to accurately reflect the risk profile of the group and should, therefore, be the responsibility of the consolidating supervisor. An amendment to Article 129 is needed to extend the role of the consolidating supervisor to Pillar 3.
9. Article 136 should also be amended to clarify that sanctions, particularly the imposition of a specific own funds requirement in excess of the minimum, shall be applied at the consolidated group level by the consolidating competent authority (where appropriate). This will ensure the orderly and proportionate application of the requirements of the Directive. The conditions in Article 69 will ensure that any additional own funds are distributed adequately among the parent undertaking and the subsidiaries.
10. Amendments to Articles 129(1) and 136 are attached.

DRAFT AMENDMENT

Article 129

1. The competent authority responsible for the exercise of supervision on a consolidated basis of the EU parent credit institutions and credit institutions controlled by EU parent financial holding companies shall carry out the following tasks:

(a) supervisory overview and assessment of compliance with the requirements laid down in Articles 71, 72(1), 72(2) and 73(3);

(b) coordination of the gathering and dissemination of relevant or essential information in going concern as well as in emergency situations;

(c) planning and coordination of supervisory activities in going concern as well as in emergency situations including in relation to the activities in Article 124, in cooperation with the competent authorities involved, **and**

1. *In addition to the responsibilities imposed under the other provisions of this directive,* the competent authority responsible for the exercise of supervision on a consolidated basis of the EU parent credit institutions and credit institutions controlled by EU parent financial holding companies shall carry out the following tasks:

(a) (18 words deleted)

(b) coordination of the gathering and dissemination of relevant or essential information in going concern as well as in emergency situations;

(c) planning and coordination of supervisory activities in going concern as well as in emergency situations including in relation to the activities in Article 124, in cooperation with the competent authorities involved. **[8**

in relation to Articles 43 and 141.

words deleted].

2. In the case of applications for the permissions referred to in Articles **84 (1), 87 (9) and 105** respectively, submitted by an EU parent credit institution and its subsidiaries, or jointly by subsidiaries of an EU parent financial holding company, the competent authorities will work together, in full consultation, to determine whether or not to grant the permission sought and to determine the terms and conditions, if any, to which such permission should be subject. An application as referred to the first subparagraph shall be submitted only to the competent authority referred to in paragraph 1. (...)

2. In the case of applications for the permissions, **approvals or reviews** referred to in Articles 84 ~~(1)~~, 87 (9), **89, 105, 124, 146 and 148** respectively, submitted by an EU parent credit institution and its subsidiaries or jointly by subsidiaries of an EU parent financial holding company, the competent authorities will work together, in full consultation, to determine whether or not to grant the permission sought and to determine the terms and conditions, if any, to which such permission should be subject. An application as referred to the first subparagraph shall be submitted only to the competent authority referred to in paragraph 1. (...)

Justification

Pillars 2 and 3 must be applied at the consolidated group level within the EU to ensure that competent authorities have view of the group's whole risk profile. The list of competencies has been extended to Pillars 2 and 3. This is of essential importance to ensure a coherent supervision of cross-border financial institutions. This extension will be in the interests of depositors and borrowers and is consistent with best risk management practices in the industry and the delivery of Single Market objectives.

Article 136

1. Competent authorities shall require any credit institution that does not meet the requirements of this Directive to take the necessary actions or steps at an early stage to address the situation.

1. **Without prejudice to Article 69 and Article 129**, competent authorities shall require any credit institution that does not meet the requirements of this Directive to take the necessary actions or steps at an early stage to address the situation.

For those purposes, the measures available to the competent authorities shall include the following:

For those purposes, the measures available to the competent authorities shall include the following:

(a) obliging credit institutions to hold own funds in excess of the minimum level laid down in Article 75;

(a) obliging credit institutions to hold own funds in excess of the minimum level laid down in Article 75;

(b) reinforcing the arrangements and strategies implemented to comply with Articles 22 and 123;

(b) reinforcing the arrangements and strategies implemented to comply with Articles 22 and 123;

(c) requiring credit institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;
(d) restricting or limiting the business, operations or network of credit institutions;

(c) requiring credit institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;
(d) restricting or limiting the business, operations or network of credit institutions;

(e) reducing the risk inherent in activities, products and systems by credit institutions.

(e) reducing the risk inherent in activities, products and systems by credit institutions.

The adoption of these measures shall be subject to Title V, Chapter 1, Section 2.

The adoption of these measures shall be subject to Title V, Chapter 1, Section 2.

2. A specific own funds requirement in excess of the minimum level laid down in Article 75 shall be imposed by the competent authorities at least on the credit institutions which have in place inadequate arrangements, processes, mechanisms and strategies for the management and coverage of risks, if the sole application of other measures is unlikely to reinforce those arrangements within an appropriate timeframe.

2. A specific own funds requirement in excess of the minimum level laid down in Article 75 shall be imposed by the competent authorities at least on the credit institutions which have in place inadequate arrangements, processes, mechanisms and strategies for the management and coverage of risks, if the sole application of other measures is unlikely to reinforce those arrangements within an appropriate timeframe.

Justification

This amendment clarifies that sanctions, particularly the imposition of a specific own funds requirement in excess of the minimum, shall be applied at the consolidated group level by the consolidating competent authority (where appropriate). This will ensure the orderly and proportionate application of the requirements of the Directive. The conditions in Article 69 will ensure that any additional own funds are distributed adequately among the parent undertaking and the subsidiaries.

INTRA-GROUP EXPOSURES WITHIN BANKING GROUPS APPLYING RISK MANAGEMENT AT THE CONSOLIDATED LEVEL

Issue

- Member States have discretion to set the risk weight for intra-group exposures, with the rules applying only to counterparties within the same Member State as the credit institution.

Objective

- Deliver the application of the 0% risk weighting for intra-group exposures as a rule to counterparties within the EU within banking groups meeting the criteria set out in Article 80(7).

Justification

- The FBE welcomes the recognition that it is appropriate to apply a 0% risk weighting to exposures to undertakings within the same group as the credit institution. This change is consistent with the geographical scope of Article 70.
- It is, however, disappointing that the application of a 0% risk weighting is a national discretion rather than a rule. This discretionary approach could lead to credit institutions in some Member States being required to hold capital against intra-group exposures, without a prudential justification for doing so. This would produce competitive distortions in the Single Market and could lead to higher costs for depositors and borrowers.
- The unlevel playing field would be exacerbated by limiting the option to apply a 0% risk weighting to exposures to counterparties within the same Member State. This would be inconsistent with the delivery of Single Market objectives, and cannot be justified on prudential grounds. There has never been a default on an intra-group exposure even in situations where banks have pulled out or foreign subsidiaries.
- Applying a risk weight to intra-group exposures would not only result in a massive cost to the banking industry, it could also impact on the calibration of the Accord given that IGEs were not included in the Quantitative Impact Studies based on consolidated supervision. In one cross-border banking group alone, intra-group exposures eliminated in the consolidation process total €610 billion, the exposures of the parent company to its foreign subsidiaries amount to €90 billion. This results in an additional capital requirement of €1.5 billion.
- Furthermore, IGEs are not currently risk weighted under Directive 2000/12/EC.
- In any event, the interests of depositors and borrowers would be fully protected by the condition that there must be no current or foreseen material or legal impediment to prompt transfer of own funds or repayment of liabilities from the counterparty to the credit institution.
- The recasting Directive should be amended to apply a 0% risk weighting for intra-group exposures as a rule within consolidated banking groups in the EU where the criteria in Article 80(7) are met.

Background

1. Article 80(7) of Act 1 of the proposed recasting Directive allow Member States to apply a 0% risk weight to exposures to a counterparty which is the parent undertaking of a credit institution, its subsidiary or a subsidiary of its parent undertaking. The counterparty must be established in the same Member State as the credit institution.
2. A 0% risk weight is a correct reflection of the risk associated with intra-group exposures. It should be applied as a rule to all intra-group exposures to counterparties within the EU.
3. An amendment to Article 80(7) is attached.

DRAFT AMENDMENT

Article 80(7)

7. With the exception of exposures giving rise to liabilities in the form of the items referred to in points **(1) to (8)** of Article 57(1) , competent authorities **may** exempt from the requirements of paragraph 1 of this Article the exposures of a credit institution to a counterparty which is its parent undertaking, its subsidiary or a subsidiary of its parent undertaking, provided that the following conditions are met:

(a) the counterparty is an institution or a financial holding company, financial institution, asset management company or ancillary services undertaking subject to appropriate prudential requirements;

(b) the counterparty is included in the same consolidation as the credit institution on a full basis;

(c) the counterparty is subject to the same risk evaluation, measurement and control procedures as the credit institution;

(d) ***the counterparty is established in the same Member State as the credit institution;***

(e) there is no current or foreseen material or legal impediment to the prompt transfer of own funds or repayment of liabilities from the counterparty to the credit institution.

In such case, a risk weight of 0% shall be applied.

7. With the exception of exposures giving rise to liabilities in the form of the items referred to in points **(a) to (h)** of Article 57(1) , competent authorities **shall** exempt from the requirements of paragraph 1 of this Article the exposures of a credit institution to a counterparty which is its parent undertaking, its subsidiary or a subsidiary of its parent undertaking, provided that the following conditions are met:

(a) the counterparty is an institution or a financial holding company, financial institution, asset management company or ancillary services undertaking subject to appropriate prudential requirements;

(b) the counterparty is included in the same consolidation as the credit institution on a full basis;

(c) the counterparty is subject to the same risk evaluation, measurement and control procedures as the credit institution;

(d) ***deleted;***

(e) there is no current or foreseen material or legal impediment to the prompt transfer of own funds or repayment of liabilities from the counterparty to the credit institution.

In such case, a risk weight of 0% shall be applied.

Justification

A 0% risk weight is a correct reflection of the risk associated with intra-group exposures. In order to remove competitive distortions within the Single Market, a 0% risk weight should be applied as a rule to all intra-group exposures to counterparties within the EU. The position of depositors and borrowers would be fully protected by the conditions, particularly condition (e).

OPERATIONAL RISK ADVANCED MEASUREMENT APPROACH

Issue

- Member States have discretion to decide whether or not the qualifying criteria for use of the AMA can be met by the parent and its subsidiaries considered together.

Objective

- Remove the national discretion in Article 105(4).

Justification

- Application of the AMA approach at the consolidated group level within the EU is in line with the business lines approach to operational risk management and data pooling put in place by the European banking industry.
- Application of AMA at the consolidated level gives supervisors a clear understanding of a group's operational risk profile.
- Removal of the national discretion in Article 105(4) would be consistent with the delivery of Single Market objectives and provides a level playing field between Europe and the United States.

Background

1. Article 105(4) provides that where an EU parent credit institution and its subsidiaries or an EU parent financial institution and its subsidiaries use AMA on a unified basis for the parent and its subsidiaries, the competent authorities may allow the qualifying criteria in Annex X, Part 3 to be met by the parent and its subsidiaries considered together.
2. The national discretion should be removed and there should be no geographical restrictions on this treatment once the subsidiaries or the parent are incorporated in jurisdictions with equivalent supervisory standards.

DRAFT AMENDMENT

Article 105 Paragraph 4

4. Where an EU parent credit institution and its subsidiaries or an EU parent financial institution and its subsidiaries use an Advanced Measurement Approach on a unified basis for the parent and its subsidiaries, the competent authorities **may** allow the qualifying criteria set out in Annex X Part 3 to be met by the parent and its subsidiaries considered together.

4. Where an EU parent credit institution and its subsidiaries or an EU parent financial institution and its subsidiaries ***or a parent institution incorporated in a third country with an equivalent supervisory regime*** use an Advanced Measurement Approach on a unified basis for the parent and its subsidiaries, the competent authorities ***shall*** allow the qualifying criteria set out in Annex X Part 3 to be met by the parent and its subsidiaries considered together.

NATIONAL DISCRETIONS

Issue

- The FBE has identified 149 national discretions in the proposed Capital Requirements Directive. This represents a minimum of 149 opportunities for the proposed Directive to be implemented differently across the European Single Market.

Impact

- Not all national discretions have the same purpose or effect on the Directive.
- Some national discretions produce a distortive impact on competition in the Single Market; others are in the directive to ensure that the specificities of Europe's local markets can accommodate the requirements set out in the Directive, at least at for the time being.

Objective

- The FBE advocates the immediate removal of those national discretions that distort competition in the single level playing field in Europe. Those national discretions that the industry considers to be have such an impact are set out below.
- The remaining national discretions should be removed over time, taking into account moves towards increased supervisory convergence in Europe, a welcome process which is facilitated by the Committee of European Banking Supervisors. In the mean time, the industry recommends that mutual recognition and the establishment of practical supervisory arrangements be used to overcome the clear costs on industry and the unlevel playing field the number and nature of the proposed national discretions would bring about.

DRAFT AMENDMENTS

Act 1, Article 70

70. The competent authorities **may** allow on a case by case basis parent credit institutions in a Member State to incorporate in the calculation of their requirement under Art. 68 (1) subsidiaries in the Community **which meet the conditions laid down in the points (a), (c) and (d) of Art. 69**, and whose material exposures or material liabilities are to that parent credit institution in a Member State.

The competent authorities **shall** allow on a case by case basis parent credit institutions in a Member State to incorporate in the calculation of their requirement under Art. 68 (1) subsidiaries in the Community **[16 words deleted]** and whose material exposures or material liabilities are to that parent credit institution in a Member State.

Justification:

The industry firmly believes that competent authorities must allow credit institutions to take the decision regarding the consolidation of subsidiaries in the same Member State. This is to ensure that the level playing field is upheld and that all banks in all jurisdictions operate under the same conditions.

Act 1, Article 80.3

3. For the purpose of calculating risk-
3. For the purpose of calculating risk-

weighted exposure amounts for exposures to institutions, competent authorities shall **decide whether to** adopt the method based on the credit quality of the central government of the jurisdiction in which the credit institution is incorporated **or the method based on the credit quality of the counterparty institution in accordance with Annex VI.**

weighted exposure amounts for exposures to institutions, competent authorities shall **[3 words deleted]** adopt the method based on the credit quality of the central government of the jurisdiction in which the credit institution is incorporated **[17 words deleted]**.

Justification

Credit institutions operating across borders could be subject to materially different treatment to competitors operating in the same market. This would be inconsistent with the Single Market objectives. The goal is to have only one method, aiming to produce a consistent approach across the EU. The FBE believes that option one is the most appropriate method.

Act 1, Article 80.7

7. With the exception of exposures giving rise to liabilities in the form of the items referred to in points (1) to (8) of article 57(1) (items of own funds), competent authorities may exempt from the requirements of paragraph 1 of this Article the exposures of a credit institution to a counterparty which is its parent undertaking, its subsidiary or a subsidiary of its parent undertaking, provided that the following conditions are met: [...]

(d) the counterparty **is established in the same Member State as the credit institution;**

[...] In such a case, a risk weight of 0% shall be applied.

7. With the exception of exposures giving rise to liabilities in the form of the items referred to in points (1) to (8) of article 57(1) (items of own funds), competent authorities may exempt from the requirements of paragraph 1 of this Article the exposures of a credit institution to a counterparty which is its parent undertaking, its subsidiary or a subsidiary of its parent undertaking, provided that the following conditions are met: [...]

(d) the counterparty **[11 words deleted] and credit institution are established in the European Union;**

[...] In such a case, a risk weight of 0% shall be applied.

Justification

This waiver should be an option for the credit institution. Therefore, FBE proposes that the waiver, from the outset, should not be limited to subsidiaries located in the same Member State as the credit institution. Instead, it should be applied to all subsidiaries located within the European Union,

Moreover the waiver should be removed within a specified time frame of five years. The waiver should not be a national discretion, but there are legal impediments which require time to resolve. Supervisory practical arrangements should progressively serve to eliminate this national discretion in the mean time.

Act 1, Article 102.4

4. Competent Authorities **may** allow credit institutions to use a combination of approaches in accordance with Annex X, Part 4.

4. Competent Authorities **shall** allow credit institutions to use a combination of approaches in accordance with Annex X, Part 4.

Justification

The industry does not see any reason why banks may be denied the opportunity to use a combination of approaches in accordance with Annex X, Part 4. Therefore, the FBE recommends that the same opportunities apply to all banks across the Single Market by removing the national discretion.

Act 1, Article 104.3

3. For certain business lines, the competent authorities **may** under certain conditions authorise a credit institution to use an alternative indicator for determining its capital requirement for operational risk.

3. For certain business lines, the competent authorities **shall** under certain conditions authorise a credit institution to use an alternative indicator for determining its capital requirement for operational risk.

Justification

The industry does not see any prudential justification why banks may be denied the opportunity to use an alternative indicator for determining its capital requirement for operational risk. Therefore, the FBE recommends that the same opportunities apply to all banks across the Single Market by removing the national discretion.

Act 1, Article 105.4

4. Where an EU parent institution and its subsidiaries or an EU parent financial institution and its subsidiaries use an Advanced Measurement Approach on a unified basis for the parent and its subsidiaries, the competent authorities **may** allow the qualifying criteria set out in Annex X, Part 3 to be met by the parent and its subsidiaries considered together.

4. Where an EU parent institution and its subsidiaries or an EU parent financial institution and its subsidiaries use an Advanced Measurement Approach on a unified basis for the parent and its subsidiaries, the competent authorities **shall** allow the qualifying criteria set out in Annex X, Part 3 to be met by the parent and its subsidiaries considered together.

Justification

The industry strongly believes that it would be more appropriate to leave any choice to the firm concerned since the industry does not envisage any prudential rationale for the choice to be left to supervisors.

Act 1, Article 154.3

3. Until 31 December 2017, the competent authorities of the Member States **may exempt** from the IRB treatment **certain** equity exposures held at 31 December 2007.

3. Until 31 December 2017, the competent authorities of the Member States **shall allow credit institutions to be exempted** from the IRB treatment **for** equity exposures held at 31 December 2007.

Justification

“Grandfathering” should be an option for the credit institution and not for the national competent authority. The required capital in the most advanced approaches (such as Value at Risk modelling) is between 2 and 3 times higher than the standardised approach and much higher than the current CAD 1 requirement. This penalises the credit institutions with the most advanced risk management mechanisms and imposes an unexpected and

drastic increase in capital requirement with respect to existing long-term contracts. “Grandfathering” allows banks to handle existing contracts in a framework and with a capital charge comparable with CAD 1.

Furthermore the important gap in capital requirement between “grandfathering” and the most advanced approaches for a period of ten years will create an unlevel playing field between the member States and will unduly fragment the Single Market.

Annex VII, Part 1, Paragraph 15

15. **Subject to approval of the competent authorities**, a credit institution may employ different approaches to different portfolios where the credit institution itself uses different approaches internally. Where a credit institution is permitted to use different approaches, the credit institution shall demonstrate to the competent Authorities that the choice is made consistently and is not determined by regulatory arbitrage considerations.

15. **[7 words deleted]** A credit institution may employ different approaches to different portfolios where the credit institution itself uses different approaches internally. Where a credit institution is permitted to use different approaches, the credit institution shall demonstrate to the competent Authorities that the choice is made consistently and is not determined by regulatory arbitrage considerations

Justification

Credit Institutions operating across borders could be subject to materially different treatment to competitors operating in the same market. This would be inconsistent with Single Market objectives. The possibility to employ different approaches for equity exposures should be allowed in all the 25 Member States and not only as a national discretion, but with the credit institution demonstrating to the competent authorities that the choice is made consistently. Furthermore, since only the PD/LGD approach-justifiably- introduces a different treatment for what are –de facto- strategic investments, this approach should be an option for banks: investing in equity for strategic reasons cannot be compared to investing in private equity or managing an investment portfolio.

Annex IX, Part 4, 3.3, Paragraph 45

45. Under the Ratings Based Method, the risk-weighted exposure amount of a rated securitisation position shall be calculated by applying to the exposure value the risk weight associated with the credit quality step **with which the credit assessment has been determined to be associated by the competent authorities** in accordance with Article 98 as set out in the Tables 4 and 5.

45. Under the Ratings Based Method, the risk-weighted exposure amount of a rated securitisation position shall be calculated by applying to the exposure value the risk weight associated with the credit quality step **[14 words deleted]** in accordance with Article 98 as set out in the Tables 4 and 5.

Justification

The “Credit Quality Step” should not be subject to national discretion but should be decided at EU level. The exposure values should be the same for all the European Union. In the Basel text, there is only one set of risk weights that are associated with ratings currently used by the banking industry (AAA, AA, BB-, etc.).

Act 2, Article 22

1. The competent authorities required or **[Deleted]**

mandated to exercise supervision of groups covered by Article 2 on a consolidated basis may waive, on a case by case basis, the application of capital requirements on a consolidated basis [...]

2. [...] For the purposes of this paragraph the capital requirement for financial institutions, asset management companies and ancillary services undertakings is a notional capital requirement.

Justification

The application of this rule would lead to a distortion of competition between banks and investment firms operating in the same fields of business. Therefore, the investment firms waiver ought to be deleted.

Annex I: paragraph 52

52. Third country CIUs ***may*** be eligible if the requirements in points (a) to (e) of paragraph 51 are met, subject to the approval of the institution's competent authority.

52. Third country CIUs ***shall*** be eligible if the requirements in points (a) to (e) of paragraph 51 are met, subject to the approval of the institution's competent authority.

Justification

There is no prudential justification to not to include CIUs from third countries when they are equivalent.

Annex VI, Part 1: paragraph 36

36. When competent authorities have adopted for exposures to central governments and central banks the method described in paragraphs 4 to 6, subject to their discretion, exposures to institutions of an original maturity of 3 months or less denominated and funded in the national currency may be assigned, under both methods described in paragraphs 26 to 27 and 28 to 31, a risk weight that is one category less favourable than the preferential risk weight, as described in paragraphs 4 to 6, assigned to exposures to its central government. ***[Deleted]***

Justification

The denomination and funding in the domestic currency of a non-European country will not often be a factor that diminishes the risk level of an exposure to an institution incorporated in that country. Therefore, this national discretion ought to be deleted.

Annex VI, Part 1: paragraph 60

60. Nonetheless, where a past due item is fully secured by forms of collateral other than those eligible for credit risk mitigation purposes, a 100% risk weight **may** apply **subject to the discretion of competent authorities based upon strict operational criteria to ensure the good quality of the collateral** when value adjustments reach 15% of the exposure gross of value adjustments.

60. Nonetheless, where a past due item is fully secured by forms of collateral other than those eligible for credit risk mitigation purposes, a 100% risk weight **shall** apply **[20 words deleted]** when value adjustments reach 15% of the exposure gross of value adjustments, **if those collaterals are eligible in accordance with Annex VIII, paragraphs 11 and 13 to 22.**

Justification

It seems difficult to achieve removal of this national discretion without setting any limit to the type of collateral eligible. We think a possible solution is to admit for these purposes collaterals not eligible under CRM simple approach but eligible under other approaches like financial collateral comprehensive method or under IRB approach.

Annex VI, Part 1: paragraph 64

64. Competent authorities **may** permit non past due items receiving a 150% RW [...] to be assigned a risk weight of:

(a) 100% if value adjustments are no less than 20% of the exposure **value** gross of value adjustments;

(b) 50% if value adjustments are no less than 50% of the exposure **value** gross of value adjustments

64. Competent authorities **shall** permit non past due items receiving a 150% RW [...] to be assigned a risk weight of:

(a) 100% if value adjustments are no less than 20% of the **unsecured part of the exposure [1 word deleted]** gross of value adjustments;

(b) 50% if value adjustments are no less than 50% of the **unsecured part of the exposure [1 word deleted]** gross of value adjustments

Justification

A national discretion that applies a lower risk weight for regulatory high-risk categories, will distort the Single Market. Therefore, this national discretion should be eliminated.

The “unsecured part” is the best measure for the residual credit risk. It takes into account the fact that value adjustments are determined after deduction of (eligible) CRM.

Annex VI, Part 1: paragraph 65 (e)

(e) [...] The competent authorities **may** recognise loans secured by commercial real estate as eligible where the loan to value ratio of 60% is exceeded up to a maximum level of 70% [...]

(e) [...] The competent authorities **shall** recognise loans secured by commercial real estate as eligible where the loan to value ratio of 60% is exceeded up to a maximum level of 70% [...]

Justification

We recommend converting the discretion into a rule in the interests of Single Market objectives. Practical arrangements between supervisors could then come into play to iron out any transitional difficulties.

Annex VII, Part 1: paragraph 5

5. [...] The competent authorities may [Deleted] authorise a credit institution to generally assign preferential risk weigh of 50% to exposures in category 1 and a 70% risk weight to exposures in category 2, provided the credit institutions' underwriting characteristics and other risk characteristics are substantially strong for the relevant category.

Justification

National discretion should be removed from the beginning by deleting this paragraph since the FBE sees this national discretion as an impediment to creating a single level playing field.

Annex VII, Part 2: paragraph 11

11. [...] competent authorities may require all credit institutions in their jurisdiction to use M for each exposure as set out under paragraph 12. 11. [...] [22 words deleted]

Justification

Removal of the national discretion is necessary to ensure that all credit institutions on the Foundation Internal Ratings Based Approach are subject to the same treatment across the European Union. It removes the potential for competitive distortions in the Single Market

Paragraph 38 (a)

Page 20 ECOFIN text

<p>(a) Where an exposure to an institution is in the form of minimum reserves required by the ECB [...], Member States may permit [...]</p>	<p>(a) Where an exposure to an institution is in the form of minimum reserves required by the ECB [...], Member States shall permit [...]</p>
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Justification

This article should be amended, or supervisory practical arrangements should reach the same goal since there is no reason that minimum reserve imposed by the ECB or the NCB are subject to minimum required capital.



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ITEM 5 OF THE AGENDA: CAPITAL REQUIREMENTS DIRECTIVE

The European Parliament's Rapporteur, Mr. Alexander Radwan (EPP, D) published his draft report in German on 13 April. Up to now, translations in English, French and Italian are available. The report was discussed in a first round in ECON on 25 April. On 27 April, the CAWG held a conference call to discuss its lobbying strategy. The deadline for amendments is 11 May.

Comitology

There is no clear interpretation of the implications of Radwan's amendments with regard to Comitology. Radwan stresses in his report that the Commission may not alter the provisions of the Directive when adopting the implementing measures. He furthermore grants the EP and the Council a call back clause, allowing the two institutions to raise objections to the Commission's implementing measures within a period of six months.

The CAWG decided to gather information from legal experts in order to have a clear understanding of the interpretation of Radwan's wording.

Disclosure of ratings

According to Radwan, banks should be required to explain their rating decisions to applicants in writing. Radwan principally proposes a voluntary undertaking, but also considers the adoption of legislative measures in the case that results are not satisfying.

The CAWG agreed that they objected to the amendment. However, in view of a lack of consensus within the FBE, action is left up to the Member Associations.

Level of application

Radwan did not change the Commission's proposal to apply the provisions of the directive on an individual basis. He deleted the national discretion in Article 69, Paragraph 1, but only with reference to subsidiaries of a credit institution. The credit institution itself is not mentioned. He has included the FBE's proposal to review the level of application after five years.

The CAWG did not come to a clear position on how to react to the amendment to Article 69. A letter has been sent out to the BSC requesting a clear mandate.

Intra-Group Exposures

According to the Radwan-report, the 0%-risk weight shall also apply to banks that belong to a joint liability scheme.

The CAWG decided to object and to table the FBE's existing amendment.

Days default

Radwan proposes to generally extend the days default from 90 days to 180 days, and to review the effects after a period of 5 years.

The CAWG decided to object and to ask for a transitional period of five years for banks operating 180 days default now as well as for the deletion of the review clause.

Consolidating supervisor model

Radwan adopts and extends the review clause proposed by the Council in relation to Article 129, the consolidating supervisor model. It shall be assessed after five years whether the powers given to the consolidating supervisor are adequate.

The CAWG agreed that the FBE could not at the same time accept Radwan's proposal and ask for immediate extension of consolidation to Pillars 2 and 3.

FBE strategy/Lobbying

As there is very little time for convincing MEPs to table amendments, the Secretariat has already made appointments with several MEPs. At the same time, it is necessary to concentrate on the most urgent items. The CAWG has therefore classified its technical amendments and will leave some out for the moment that can be taken up later in direct dialogue with CEBS. For urgent matters, a list has been made to divide the lobbying work between the FBE and the national federations. A further list of purely technical amendments will be sent to the EP and to the Council.

Executive Committee members are invited to exchange views on the current situation.