

Patrick Pearson
Head of Unit
Banking and Financial Conglomerates
DG Markt

By email

Leaseurope Response to the European Commission's CRD 4 Consultation

Dear Patrick,

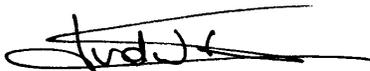
Leaseurope welcomes the opportunity to respond to the Commission's consultation of 24 July 2009 on possible further changes to the Capital Requirements Directive.

Our comments focus on areas of the consultation that are of direct relevance for the European leasing industry, namely certain proposals for the removal of options and national discretions set out in Section 3 and Annex 3. Generally speaking, Leaseurope is supportive of the Commission's intention to eliminate national options and discretions for the reasons set out in the paper and we agree with the suggested scope of maximum harmonisation.

For the other issues discussed in the consultation, we refer you to the position of the European Banking Industry Committee (EBIC), of which Leaseurope is a member.

If you wish to discuss any elements of this response further, please feel free to contact Jacqueline Mills (j.mills@leaseurope.org; +32 2 778 05 66).

Yours sincerely,



Tanguy van de Werve
LEASEUROPE DIRECTOR GENERAL

I. Provisions Not Addressed at the Consultation

1) Reduced LGDs under the IRBF approach

CRD Annex VIII, Part 3, Point 72

The consultation highlights the fact that a number of options and discretions relate to provisions with specific review clauses and consequently the paper does not deal with these issues. Nevertheless, as it is not explicitly mentioned in the consultation, we wish to recall that a fundamental provision for the European leasing industry, Annex VIII, Part 3, Point 72 setting out reduced LGDs for leasing under the IRBF approach until 31 December 2012, is also subject to a review clause. The CRD currently requires that this provision be reviewed at the end of the period. In order to ensure legal certainty for institutions applying this provision, the required review must take place well before end 2012, thus avoiding any ambiguity in treatment from 2013 onwards. Additionally, if the outcome of the review is conducive to maintaining lower LGD levels for leases, Leaseurope recommends that the discretionary nature of the provision be removed in order to elevate level playing field concerns.

2) Transitional treatment for property leasing under the Standardised Approach

CRD Article 153 (first §)

Article 153 (first paragraph) of the CRD also contains a measure for leasing that is limited in time. Under this provision, competent authorities may, until 31 December 2012, allow leasing exposures of offices or commercial premises in their territory to be risk weighted at 50% without limiting the application of this risk weight to 50% of the exposure.

This provision is key for European real estate leasing markets and if it were to expire without any additional consideration, the result would be that real estate lessors would have to double their capital requirements overnight although their risk would remain unchanged. Indeed, due to the fact that lessors own the properties they lease, they benefit from immediate and direct protection of the real estate collateral.

Consequently, Leaseurope wishes to reiterate its recommendation that a review clause be inserted into the text, particularly as this was the original intention when constructing the CRD. Moreover, we wish to recall that an equivalent provision was already available under Directive 2000/12/EC and that the existing provision is especially important for institutions that do not possess historical statistical data due to the existence of relatively small portfolios in this domain. A review should take place before the end of the current application period so as to guarantee certainty of treatment as from 2013. If the outcome of the review confirms that the treatment is warranted and functions as intended, the provision should be applied as a general rule and should no longer be a matter of discretion.

II. Provisions Addressed in the Consultation

1) Recognition of other physical collateral

CRD Annex VIII, Part 1, Point 21

Commission proposal Annex 3 Point 22 (c)

Leaseurope very much welcomes the Commission's proposal to transform this discretion into a general rule. Indeed, the recognition of other physical (i.e. non real estate) collateral under the CRD is crucial for leasing, as well as for other forms of secured lending. In a lease, the lessor maintains the ownership of the leased asset throughout the contract term and thus benefits from its security. It should therefore be allowed to recognise this protection as long as the relevant conditions relating to the quality of the collateral set out in the CRD are respected. If local supervisory authorities are satisfied these conditions are fulfilled, we can see no justification for them to disallow the recognition of this collateral. Moreover, we wish to point out that the recognition of other physical collateral is clearly integrated into the Basel II capital adequacy framework and should therefore be included the CRD as a non-discretionary provision.

In addition to the removal of the discretion, the Commission is proposing that the criteria provided in Annex VIII, Part 1, Point 21 be further elaborated as suggested by CEBS in their Second Advice on Options and National Discretions. CEBS's proposal is based on a "quick stock take of the national transposition of this discretion". While Leaseurope strongly supports all attempts to harmonise the criteria supervisors use to determine whether other physical collateral is eligible, we do however have the following remarks:

- The results of this stock taking exercise have not been shared with industry nor was industry consulted by CEBS on this issue before publication of their second advice. This was however the case for other elements of their proposal.
- For the most part, while providing some clarification on what constitutes a liquid market for other physical collateral, the expansion of the other criteria appears to overlap with the existing minimum requirements for the recognition of other physical collateral set out in Annex VIII, Part 2, Points 10 and 11.
- Lessors should be able to recognise the collateral they have in the form of their leased assets as they can today. Given the timing of the present consultation and its relatively short deadline, it has been difficult to obtain in-depth input from leasing practitioners as to whether the rewording of these criteria would in anyway prevent lessors from doing so. Establishing and tracking asset values is part of a lessor's core business. To do so in practice they access many publicly available, reliable sources providing market prices such as asset databases and expert valuations, in addition to public indexes. Lessors are able to disclose the sources of their market prices to their supervisors and to provide the necessary documentation to prove that their collateral valuations are sound, frequently revalued and sufficiently conservative. These practices are currently accepted as fulfilling existing minimum requirements for the recognition of other physical collateral and Leaseurope would therefore encourage the Commission to carefully review the new wording to ensure that the recognition of other physical collateral by lessors is not unintentionally hampered. Otherwise, there is a risk that a situation may arise where lessors are placed at a disadvantage compared to other types of lenders, even though the level of security they have is greater due to their ownership rights.

2) Residential and commercial real estate collateral

CRD Annex VIII, Part 1, Points 15 – 19 and Annex VI, Part 1, Points 45 – 60
Commission proposal Annex 3, Point 22 (a) and Annex 3, Point 17 (p)

The CRD currently gives competent authorities the discretion to apply more favourable risk weights under the Standardised Approach and to dispense with the condition that the risk of the borrower does not materially rely on the performance of the underlying property in all cases for residential real estate and under certain loss rate requirements for commercial real estate under all approaches. Leaseurope strongly supports the fact that the Commission is proposing to remove the discretionary nature of these provisions as long as local supervisory authorities are satisfied that the existing relevant conditions are met. This represents an important step forward to creating a true level playing field for institutions with property-backed exposures, including real estate lessors.

However, we strongly disagree with the proposed tightening of the relevant loan-to-value conditions and hard tests. As CEBS points out in its Second Advice on Options and National Discretions, the CRD already contains provisions to ensure that real estate collateral is prudently and frequently valued. Indeed, we share CEBS's view that, as long as property values are appropriately revalued, even if higher losses occur on real estate markets during weaker economic conditions, there would not be an increase in losses for the parts of exposures that are recognised as fully and completely secured by collateral as these will be appropriately reduced. This does not imply that higher losses for the unsecured part of an exposure may not occur under downturn conditions. However, with respect to these unsecured portions of exposures where there is no collateral to take into account, amendments to credit risk mitigation requirements are irrelevant.

3) Definition of default (number of days past due)

CRD Article 154.1, Article 154.7 and Annex VII, Part 3, Point 48
Commission proposal Annex 3, Point 21 (b)

Due to the existence of legal requirements for the authorisation of lease rental payments by PSEs in certain countries, 90 days is too short a period for institutions to be able to identify whether such entities are truly in default. This local specificity, which is beyond the control of institutions, therefore warrants the maintenance of a national discretion for the definition of default for PSE exposures under all approaches, thereby giving Member States the possibility to adapt the number of days past due to their national legal environment.

Moreover, it is common practice for corporate lease rental payments in these countries to be made on a quarterly basis. Leaseurope members in these countries have signaled that for commercial reasons it would not be feasible to adjust this practice and therefore request that Member States continue to have a discretion in this area to extend the number of days past due to 180 days.