

Committee of European Banking Supervisors
Consultation document CP 38: CEBS' implementation guidelines on Article 106(2)(c) and (d) of Directive 2006/48/EC recast

Euroclear response

The Euroclear group is the world's leading provider of domestic and cross-border settlement and related services for bond, equity, fund and derivative transactions. User owned and user governed, the Euroclear group includes the International Central Securities Depository (ICSD) Euroclear Bank, based in Brussels, as well as the national Central Securities Depositories (CSDs) Euroclear Belgium, Euroclear Finland, Euroclear France, Euroclear Nederland, Euroclear Sweden and Euroclear UK & Ireland.

Euroclear Bank is the only credit institution in the Euroclear group. Euroclear Bank and all the consolidated levels above, as well as Euroclear Belgium (as a settlement institution) and Euroclear SA/NV (stand-alone, as an entity closely associated to a settlement institution) have to comply with the Capital Requirement Directive (Directive 2006/48/EC).

We are pleased to be given the opportunity to provide our view on the consultation issued by the Committee of European Banking Supervisors (CEBS), *CEBS' implementation guidelines on Article 106 (2) (c) and (d) of Directive 2006/48/EC recast*.

General comments

We support the Committee's proposals aimed at clarifying the scope of the exemption contained in Article 106 (2) (c) and (d). We refer to Euroclear's response to the European Commission's public consultation on "CRD potential changes" for further information on Euroclear's specific activity and on the relevance of the exemption for such activity.

Consultation questions

1. Is the definition of exempted exposures in relation to transaction type clear and do they cover all relevant exposures?

We believe that what is presented as "transaction types" 1 and 2 refers to types of services (the provision of money transmission and financial instruments clearing, settlement and custody services). To our understanding, a pre-condition for the applicability of the exemption is that the exposures arise in the course of the provision of such services to clients. The description of these services is sufficiently clear. You may also consider referring to the related business line (Payment and settlement), as referred to in Annex X of the CRD.

2. Is the description of client activity sufficiently clear? Would practical problems related to the identification of client activity arise and, if so, how could they be solved?

In the case of Euroclear Bank, there would be no particular difficulties to distinguish exposures arising from client activity (as reflected in positions on client accounts and cash correspondent accounts which are fully driven by such activity) from exposures



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arising from proprietary activity, as these are well identified in Euroclear Bank's systems. You may consider complementing the description of the eligibility criterion by a negative criterion, stating that exempted exposures may not be the result of proprietary activity.

We believe that it should be made clear under the criterion related to client activity that some of the exempted exposures are only indirectly caused by such activity. This concerns mainly the "other exposures" falling under the exemption. Some of these "other exposures" arise from the diversification of exposures caused directly by client activity. Otherwise, it may seem that the eligibility criteria under A and B are not fully consistent.

3. Are the specifications regarding the available time for the reduction of the exempted exposures sufficiently clear?

We understand the wish of CEBS to prevent exempted exposures from lasting for longer periods of time than accounted for in the Directive. We also appreciate the fact that CEBS has well understood that, even though institutions are able to reduce the specific exposures which have caused the large exposures limit to be exceeded to below that limit by the next day, they cannot ensure that the total exposure on the relevant counterparties will remain below that limit. Indeed, the total exposures are highly volatile, mainly intraday, and other client activity, taking place on the next business day, may lead exposures to increase again. For example, in the case of exposures at cash correspondents, as soon as payments to clients have led to a material reduction of exposures at cash correspondents, these exposures may increase again due to funding obtained from other clients, for transactions yet to be settled.

Institutions can ensure or demonstrate that there are clear incentives in place for exposures to be reduced within the given timeframe, e.g. in the form of high debit interest rates on client end of day debit positions or unattractive rates on overnight long positions at cash correspondents. They may also make sure that when relying on the exemption for redeposits, such redeposits never exceed the authorised period. However, in particular for exposures at cash correspondents, it would not be feasible on a day-to-day basis to look through the total exposure to the level of the individual transactions that have led to such an exposure. Being able to demonstrate very precisely the drivers of the total exposures would necessitate a real-time view on (drivers of) intraday exposures to all counterparties. In addition, it would also necessitate building a bridge between systems based on end-of-day accounting figures (i.e. based on stock data related to accounting positions), as used to calculate compliance with the large exposures limit and other regulatory ratios, and systems that would capture flows of transactions, not only in the book of the reporting institution itself, but in the books of all of its counterparties. For very obvious technological constraints, this will not be achievable in the short to medium term.

Specific comments

We wish to highlight a few elements that may deserve some further clarification:

We believe that stating on p. 6 that "the above transactions shall only be exempted if they stem from delayed receipts in funding (late incoming payments)" is too restrictive.

Indeed, institutions offering payment, clearing, settlement and custody services are generally not in a position to fully control the short-term exposures related to such service provision, as they are driven by client activity. The consequence is that the exposure at the end of the day can generally not be estimated adequately – and therefore adequately diversified - during the day. This is due not only to delayed receipts in funding, but also to unexpected (not pre-advised) incoming funds, as well



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as expected inflows or outflows that do not materialise. Given the fact that this uncertainty lasts until the end of the day (the time at which the provision of payment, clearing or settlement services ceases), institutions can only partially take initiatives during the day in order to reduce expected concentrations. For example, in the case of exposures to cash correspondents, Euroclear needs to ensure that it has sufficient funds available for outflows that clients might trigger before the end of the day. Taking decisions too early to reduce such exposures might potentially create liquidity risks for the service provider later on.

We would also like to draw the CEBS' attention to the text of article 106 (2) (c), which states that exposures shall not include, in the case of the provision of particular services "delayed receipts in funding and other exposures arising from client activity". Delayed receipts in funding may thus not be the sole driver of exempted exposures. Recital 22 even provides some insights regarding the scale of the exemption, naming "inter alia, balances on interbank accounts resulting from client payments, including credited or debited fees and interest, and other payments for client services [...]".

Credit quality (p. 6): Please confirm that our understanding that the criterion refers to the credit quality step as reflected in Directive 2006/45/EC Annex VI is correct. If it were to refer to a precise rating, it would be too strict. Indeed, the condition would not allow institutions to diversify exposures away from AAA-rated counterparties, as it would not be possible to find equally well rated counterparties in the market. To a lesser extent, this comment would also hold for other very well-rated counterparties (in the AA-range), as at the times at which redeposit transactions are executed (at the end of the day, as the system cut-off time occurs at 16.30) there may be only a few available counterparties in the market. We agree with CEBS that this condition should be sufficiently restrictive so as not to allow institutions to exempt transactions that were executed with a view to increasing their revenues only.

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