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## **EBF response to CEBS' Consultation paper on CEBS's implementation guidelines on Article 106(2) (c) and (d) of Directive 2006/48/EC recast (CP 38)**

### **Key Points**

- The EBF is pleased to note that the proposed draft guidelines reflect to a large extent the technical input provided by the CEBS' Industry Expert Group in the preparatory phase of the drafting of the guidelines;
- By and large, the definitions proposed in the guidelines are clear;
- Against this background the EBF broadly supports the draft guidelines;
- The EBF nevertheless points to a number of areas in part IV and V, where clarification would be necessary, among others regarding the classification of delayed receipt in funding as an exposure;
- The EBF furthermore calls on CEBS' members to consider each large exposure situation on a case-by-case basis, in a proportionate way, so that the supervisory requirements can both meet prudential expectations and be applicable in practice.

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- General comments regarding the objectives of supervisors, and the risks arising from delayed settlement of securities:

Supervisors require banks to pursue mutually exclusive aims: on the one hand banks are required to be sufficiently liquid to meet business as usual and stressed outflows, so banks carry large balances on their main Nostro accounts. On the other hand, the level of such balances is to be restricted to 25% of capital or EUR150m with a view to establish a backstop regime to limit systemic risk. EBF Members appreciate the exemption provided for large exposures arising from "client activity". In practice however banks do not have the ability and resources available to analyse and classify every transaction passing through their Nostro accounts to determine their nature. If these guidelines are applied strictly, there is a high risk of creating confusion on a large scale and increasing operational risk and breaches of the rules.

The EBF is also concerned that the restriction regarding the duration for exposures arising from settlement is inadequate and fails to take account of business reality. The problem arises in respect of the purchase of securities where the counterparty fails to deliver stock on settlement date so that settlement is delayed. The buyer has no control over when the seller delivers the stock and, therefore, has to keep the money with the Nostro bank until the trade settles. Thus, if delivery is more than one business day late and the settlement amount is more than 25 per cent of capital, there is a breach. The position is made worse where the security is being acquired by the institution itself as the one-day grace period is only available for exposures in respect of client transactions.

The EBF is well aware that it is not within CEBS' remit to change the (Level 1) rules on large exposures. The EBF therefore calls on CEBS and its members to consider each large exposure situation on a case-by-case basis and in light of the proportionality principle.

- CEBS' questions

#### **Part IV, Article 106(2)(c)**

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

Not entirely. With respect to paragraph 22, subparagraph A "Transaction type", the EBF has the following comments:

First, delayed receipts in funding need to be included as exposure.

Second, it would be more appropriate to re-organise paragraph 22 by separating transaction type from exposures as follows:

- "A. Transaction type" should be limited to 1 and 2;
- "C. Short-term (overnight)" should be re-named "C. Exposure" and cover both the kinds of exposure (delayed receipts in funding + other exposures) and the maturity.

Third, delayed receipt in funding and other exposures are two separate kinds of exposures. Therefore, other exposures should not be related to delayed receipt in funding, as the first

sentence of the last paragraph of subparagraph A would suggest. Furthermore, the wording is very confusing as transactions cannot stem from delayed funding (only the other way round). This should be clarified.

Regarding paragraph 22, subparagraph B "Client activity" it would be helpful if CEBS included - as a contrast - examples of activities which are not client-related.

**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?**

Yes.

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

Yes.

**Part V, Article 106(2)(d)**

**4. Are the definitions of exempted exposures in relation to transaction type clear and do they cover all relevant exposures?**

Regarding paragraph 24, subparagraph A "Transaction type":

The EBF wishes to clarify that, strictly speaking, Article 106 (2) (d) of CRD II does not provide a list of exposures to be exempted (as it only mentions intra-day exposures to certain institutions), but a list of transaction types in relation to which these exposures occur.

CEBS states that "exposures are exempted irrespective of the origin of the exposures": considering that exposures have to be related to certain transaction types, CEBS should clarify this statement.

**5. Is the description of specific service providers sufficiently clear?**

Yes.

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

Yes.

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