

Committee of European Banking Supervisors
Mr. Arnoud Vossen
cp27@c-eps.org

T +31 20 5502 816
M +31 6 16 58 28 07
E maarseveen@nvb.nl

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Subject: Consultation (CP27) regarding the implementation
guidelines on hybrid capital instruments

Dear Mr. Vossen,

We thank you for the consultation on the implementation guidelines on hybrid capital instruments (CP27) and the effort focussed on European harmonizing of the implementation of the May 6th accepted CRD – changes on hybrid capital instruments. We refer to the comments of the EBF on this consultation paper, but we also like to highlight the following aspects of the consultation paper specifically.

In general, the exchange of information between banking companies and the supervisors is extensive. We would like to call your attention to the efficiency of this process:

- Could supervisors be stimulated to use the information already available at their premises, with a clause that information only needs to be provided if not yet done so before.
- Could supervisors be stimulated to a maximum reasonable term of reaction, so the timelines of these processes can be planned adequately.

To enhance the uniformity of application of these guidelines and to provide for the necessary transparency we would like to suggest publishing the outcome of the assessments of the incentives to redeem (par. 53 en **Q1.1**). Transparency will support the maturity on this topic.

We do not fully understand the cap mentioned in paragraph 56 on the conversion ratio at the date of redemption of 150%. We would appreciate some clarification about this limit **Q1.1 / Q1.2**).

Regarding the application for call or redemption, we would like to suggest an extra option in paragraph 64, to add an option for direct replacement within 5 years (**Q2.1 / Q2.2**).

- e. the actions taken to replace the instrument to be redeemed or called for by a new / existing hybrid instrument or by shares to be issued. This information is particularly relevant when buy back of instruments is proposed within 5 years of issuance.

We are not supportive of the statement in paragraph 83 that payments 'should also be waived if the major part of the dividend to shareholders is not paid in cash but in shares' (Q3) There is no reason to oblige this treatment in times of normal economic activity and normal solvency. The statements under a) en b) are sufficient for Supervisors to manifest their views and measures if needs be.

The guidelines in relation to ACSM (**Q4**) are sufficiently clear. We appreciate the contents of the guidelines on this topic, but are however concerned about the fiscal consequences and the resulting impact (if the payments lose their tax deductibility) on the level of the own funds.

We would therefore suggest altering the first sentence of paragraph 90 to *'therefore an ACSM is only acceptable if it achieves the same economic result as a cancellation of the coupon (i.e. there is no decrease in capital) and the treatment of the instrument as debt for (local) tax purposes is safeguarded.*

And also add in paragraph 92 to the second sentence *'... is triggered, preserving the (current and preceding) fiscal treatment of the instrument as debt (based upon the notion that the fiscal impact could be averse to the objectives sought for using the option of cancellation).*

This gives the local competent authorities and the institutions the opportunity to both handle the tax consequences and meet the objectives of CRD 63a (3).

In paragraph 90 the obligation in the second sentence 'using newly issued instruments without delay' could cause a negative sentiment in the market and lead to further pressure on the institution and the sector as a whole. We think the objectives in CRD 63a (3) are better met when *'without delay'* would be changed. Our suggestion for the second sentence of paragraph 90 is: *To meet this condition, the deferred coupons should be satisfied, as soon as possible (within a reasonable timeframe based on the developments in the markets), using newly issued instruments, referred to etc.*

Kind regards,

Christel van Maarseveen
The Netherlands Bankers' Association
Tel: +31 20 5502 816
Mob: +31 6 16 58 28 07
E-mail: maarseveen@nvb.nl