

## POSITION PAPER

August 2010

### CECA's contribution to CEBS Consultation Paper 41

### **CEBS DRAFT GUIDELINES ON REVISED ARTICLE 3 OF DIRECTIVE 2006/48/EC**

*CECA, the Spanish Confederation of Savings Banks (Cajas de Ahorros) was created in 1928 with the aim to join its members' forces and represent Spanish Savings Banks Sector. CECA is formed of the 45 Spanish Savings Banks, which are one of the most important players in Spanish financial system: their total assets reached €1,269 billions, 24,985 branches in Spain and 134,867 employees in 2008.*

*Spanish Cajas are credit institutions that act and are organized as private enterprises. They have the legal status of private institutions. Spanish Cajas are independent institutions which compete directly and individually with each other and with other financial institutions and they are free to decide on their territorial expansion.*

*As credit institutions with foundational origins, Cajas pursue the following main objectives: (1) universal provision of financial services; (2) economic efficiency; (3) promotion and competition and avoidance of monopolistic practices; (4) contribution to welfare and redistribution; and (5) promotion of regional and community development. From their inception, Cajas are required to channel the surpluses that are not allocated to reserves toward project that fall under their "Obra Social" scheme (community investments projects).*

*Spanish Cajas are subjects to the same legislation that applies to other types of credit institutions (commercial and cooperative banks) in terms of transparency, solvency and consolidation.*



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## CEBS CONSULTS ON GUIDELINES REGARDING REVISED ARTICLE 3 OF DIRECTIVE 2006/48/EC (CP41)

General speaking, we think that the proposed guidelines need to be further developed in several areas. Specifically, **we would like to clarify the applicability of the provisions included in article 3 to Institutional Protection Schemes (IPS)** as currently defined by Spanish Law (SIP). It will probably be the case also in other countries where similar structures exist.

In Spain, IPS's currently have the following **characteristics**:

- Two or more saving banks (*cajas*) are required to establish the scheme;
- The IPS is articulated around a new central body. This central body is another credit institution (usually with PLC status), registered in Spain and under the supervision of the Bank of Spain;
- Business strategy, control and risk management are centralised in the PLC, which becomes the parent entity, effectively controlling the group that constitutes the IPS;
- In order to ensure the compromise with the central body, *cajas* are obliged to share at least 40% of both their profits and capital through the PLC (in a framework of mutual solidarity in terms of solvency and liquidity);
- Individual *cajas* retain their status as credit institutions, keeping part of the financial business (usually the purely retail one);
- Permanence: A minimum of 10 years, and voluntary exits are severely penalized. Also, Bank of Spain will assess the resulting situation of both the individual *caja* and the IPS without it as a previous step to be allowed to exit the IPS.

Our input is organised following the different aspects considered in the Guidelines:

- A. Clarification of “Permanently affiliated to a central body”
- B. Clarification of “Commitments/Guarantees required”
- C. Clarification of the “relationship between requirements and exemptions”
- D. Clarification of the interpretation of “consolidated accounts”
- E. Clarification of “instructions issued by the management of the central body”
- F. Clarification of the use of the EU Passport.



### **A. Clarification of “Permanently affiliated to a central body”**

We think that the definition of “permanently affiliated” needs to be further developed, in order to clarify its applicability to IPS’s. Several questions can be raised regarding this issue:

- Can the contractual agreement specify a minimum number of years during which no entity is allowed to leave the group and still be considered as “permanent”? (taking into account that after a specific date leaving the group will be a possibility);
- Even if a specific minimum duration is specified, is it enough, in order to comply with article 3, in case the supervisor is entitled to reject the exit of an individual entity when its solvency or the group’s is affected?;
- Are specific penalties (in case of exit) required, or the costs associated to the organizational changes required are considered sufficiently penalizing? (i.e. Integrated IT system, centralised treasury functions...).

### **B. Clarification of “Commitments/Guarantees required”**

As in the previous aspect, it is not clear what level of commitment and/or guarantees are required to comply with article 3. Specifically:

- Do the guarantees need to compromise 100% of the capital and/or profits in each affiliate institution, or can they be limited to a certain percentage? In that case, what minimum percentage will be considered adequate?
- In case there is a limit to the mutual commitment, would it still be adequate if the percentage committed comprises 100% of the excess above the solvency or liquidity ratios?

### **C. Clarification of the “relationship between requirements and exemptions”**



We agree with the interpretation that in order to comply with article 3 (2) you need to also comply with article 3 (1).

**D. Clarification of the interpretation of “consolidated accounts”**

We agree with the consideration of “consolidated accounts” on a prudential perspective.

**E. Clarification of “instructions issued by the management of the central body”**

The minimum coverage requested in these guidelines is very exhaustive, but general speaking it is consistent with the exemptions that compliance with article 3 allows for affiliated institutions, so we do not have relevant comments on this aspect.

**F. Clarification of the use of the EU Passport**

Finally, regarding EU Passport, we disagree with the CEBS interpretation. It is our understanding that in case an affiliated institution is in itself a credit institution authorized in an EU country, it should be allowed to operate on an individual basis in other EU countries, provided that all the provisions included in article 24 of Directive 2006/48/EC are met.