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Prepared by Ar

Comments on Consultation Paper

19 April 2016

here: Draft Guidelines on implicit support under Article 248(2) of Regulation (EU) No 575/2013

Dear Sir or Madam,

The German Banking Industry Committee (GBIC) very much appreciates the opportunity to comment on the EBA's consultation paper on Draft Guidelines on implicit support under Article 248(2) of Regulation (EU) No 575/2013.

Please find enclosed our response to this consultation. We hope you will find these comments helpful.

Yours sincerely,
on behalf of the German Banking Industry Committee,
Association of German Banks


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Comments

on the EBA consultation paper on
*Draft Guidelines on implicit support under
Article 248(2) of Regulation (EU) No 575/2013
(EBA/CP/2016/1)*

Register of Interest Representatives
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Berlin, 19 April 2016

The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks.

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General comments

The *Draft Guidelines on implicit support under Article 248 (2) of Regulation (EU) No 575/2013* aim to explain what constitutes arm's length conditions and when a transaction is not structured to provide support. In this context, the European Banking Authority (EBA) states that the draft guidelines apply to transactions an institution is under no contractual obligation to enter into at all or is not under a contractual obligation to enter into on the specific terms of such transaction. Implicit support should not cover support that institutions are already contractually obliged to provide. With this in mind, we propose clarifying that the EBA guidelines do not apply to fully supported conduit sponsors.

We agree, in principle, that transactions carried out by a sponsor institution can be structured to provide support. However, such transactions in the context of fully supported ABCP (asset-backed commercial paper) programmes are contractually secured obligations and do not provide implicit support, as any losses incurred by investors are borne by the sponsor bank. In view of the fact that ABCP programmes with purchased assets that are fully supported by a liquidity facility make up approximately 80 percent¹ of ABCP securitisations, the consultation paper should explicitly take into account the specific role of such fully supported ABCP programmes.

Detailed comments

Question 1: Do you have any general comments on the draft guidelines on implicit support under Article 248(2) of Regulation (EU) No 575/2013?

Article 248(1), sentence 3, stipulates that any such transaction, regardless of whether it provides support, should be notified to the competent authorities. We are of the opinion that the guidelines should define certain exceptional cases that are not subject to notification – for example, activities conducted by the originator concerning the continuation or liquidation of a transaction or the respective SPV that are not explicitly contractually agreed but are also not intended to protect investors from any losses or improve the performance of the securitised assets or securitisation positions. These practical needs will not result in implicit support and should be excluded from the notification requirement. Another example is the repurchase of ABCP. This must be done at market prices and is typically subject to a market conformity check. A requirement to additionally notify such transactions would impose a heavy administrative burden on institutions that would not be offset by any significant supervisory benefit.

Paragraph 2 of the *Background and rationale* section of the consultation paper sets out examples of implicit support, in particular the sale of discounted credit risk exposures. We recommend clarifying that implicit support in this case means the sale of discounted credit risk exposures after the initiation of a transaction. Our understanding is that anything agreed during the initiation process is not a case of implicit support. To avoid any doubt, we recommend clarifying that the sale of discounted credit risk exposures into the pool of securitised credit risk exposures at the inception of a transaction and as contractually agreed does not constitute implicit support.

¹ EBA report on qualifying securitisation, page 16.

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Paragraph 16(b) of the draft guidelines stipulates that a transaction should, among other things, be deemed to invalidate the conditions for significant risk transfer if the capital or liquidity position of the originator institution is, directly or indirectly, materially affected by the transaction. We propose adding “adversely” in this sentence (“... *is, directly or indirectly, materially **adversely** affected by the transaction*”). In our view, a transaction that positively affects the capital or liquidity position of the originator institution, leading to reduced capital requirements or improved liquidity, is not a threat to fulfilment of the conditions for significant risk transfer. For this reason, only transactions where the capital or liquidity position may deteriorate should be deemed to invalidate the conditions for significant risk transfer.

Question 4: Do you have any comments on the proposed guidance regarding the factors contemplated in points (a)-(e) of Article 248(1) of Regulation (EU) No 575/2013?

Article 248(1) (a) stipulates that an institution should, when assessing whether a transaction is not structured to provide support, adequately consider at least the price of the repurchase. Paragraph 20 of the draft guidelines states that the amounts payable or receivable by the originator institution should also be considered. Competent authorities should then consider that a transaction is not executed at arm’s length conditions if the amounts are materially higher or lower than the relevant market value. We kindly request amendment of the guidelines to include specific use cases relating to Article 248(1) (a).

In our view, assessing whether a transaction is not structured to provide support is a very complex task. We consider paragraph 20 of the draft guidelines to be too imprecise with regard to transactions carried out by originators, particularly given the complexity and heterogeneity of different asset classes and the absence of market prices and external ratings for various transactions. The guidelines do not explain what is meant by amounts receivable that are materially lower or amounts payable that are materially higher. Specific examples would simplify the assessment process and would be helpful for identifying permissible as well as non-permissible situations. Furthermore, this would reduce regulatory risk for originators and improve the basis for dialogue between regulators and supervised institutions.