German Banking Industry Committee

Die Deutsche Kreditwirtschaft

Comments on EBA Draft Regulatory Technical Standards on the methods of prudential consolidation under Article 18 of the Regulation (EU) No 575/2013 (Capital Requirements Regulation – CRR)

Contact:

[Thorsten Reinicke]

Telephone: +49 30 2021- [2317]

Telefax: +49 30 2021- [19 2300]

E-Mail: [reinicke@bvr.de]

Berlin, 18-02-09

Coordinator:
National Association of German
Cooperative Banks
Schellingstraße 4 | 10785 Berlin | Germany
Telephone: +49 30 2021-0
Telefax: +49 30 2021-1900
www.die-deutsche-kreditwirtschaft.de

General remarks

We would like to thank the European Banking Authority (EBA) for the opportunity to comment on the draft Regulatory Technical Standards (RTS) on the methods of prudential consolidation under Article 18 of the CRR.

We emphasise that the CRR – as the legal basis for the RTS – clearly determines the EBA's mandate for drafting the RTS: pursuant to Article 18 (7) of the CRR, "EBA shall develop draft regulatory technical standards to specify conditions according to which consolidation shall be carried out in the cases referred to in paragraphs 2 to 6 of this Article". We would urge the EBA to make it clear that the proposed RTS cover only the methods of prudential consolidation for financial sector entities which can be included in the scope of prudential consolidation under the CRR. It is essential that the RTS do not result in the scope of prudential consolidation being extended beyond banks, financial institutions and ancillary services undertakings. Accordingly, we reject the inclusion of step-in-risk into pillar 1. Basel Committee made it clear in its guidelines that step-in-risks should be dealt with in pillar II.

On the other hand, accounting consolidation in a company's consolidated financial statements cannot be used as a basis to justify prudential consolidation. The EBA should include a clarification to this effect in its RTS in order to avoid any chance of misunderstanding. At the same time, however, supervisors should also ensure that the methods of consolidation (at equity, at cost, etc.), in accordance with the CRR rules, do not diverge unnecessarily. The methods provided for prudential consolidation differ materially from the methods applied under IFRSs. The purposes of prudential consolidation differ from those of consolidation in accordance with accounting standards. Nevertheless, any unnecessary deviation of methods involves additional administrative efforts, which can – in total - place significant burdens on some banks. We therefore request that methods of prudential consolidation be more closely oriented towards those under applicable accounting standards, to the extent possible. Where, in EBA's view, a diverging method of consolidation is to be applied, care should be taken to ensure such method is practicable.

As is the case at present, consolidation should be oriented upon whether there is a parent/subsidiary relationship (as defined by Article 4 (1) nos. 15 and 16 of the CRR) or other form of relevant relationship (as forseen by Art. 18 (2) – (6) CRR). Inclusion in the scope of prudential consolidation moreover requires an assessment as to whether the enterprise at hand is an institution within the meaning of Article 4 (1) no. 3 of the CRR, a financial institution within the meaning of Article 4 (1) no. 26 of the CRR, or an ancillary services undertaking within the meaning of Article 4 (1) no. 18 of the CRR.

As far as accounting is concerned, the standard consistently refers to IFRSs. In our view, this is not appropriate, since it does not take into account any differences in the national GAP. Indirectly, institutions could be forced to move from national accounting standard to IFRS. Such a compulsion constraint would contradict the legal valuation and should not be required by a technical standard.

In this context, the determination of "ancillary services undertakings" (as defined in Article 4 (1) no. 18 of the CRR) and "financial institutions" (as defined in Article 4 (1) no. 26 of the CRR), derived from Annex I to the Capital Requirements Directive (CRD), is also relevant for our comments. Furthermore, the vast majority of our member institutions hold the view that segregated funds (such as special funds under German investment law) and securitisation special purpose entities (SSPEs) should neither be classified as "financial institutions" or "ancillary services undertakings", nor as subsidiaries to be included in the scope of prudential consolidation of banks, as defined in Articles 1 and 2 of Directive 2013/34/EU dated 26 June 2013 (the "EU Accounting Directive"). Hence, these entities are exempt from prudential consolidation requirements, and outside the scope of application of Article 18 of the CRR.

Furthermore, the fact that supervisory authorities have the power to decide on the method of consolidation to be applied on a case-by-case basis may pose a problem where institutions have already chosen a method: essentially, institutions will no longer be able to plan their method of consolidation. Institutions would be forced to not only apply their chosen method of consolidation, but additionally, a method selected by supervisors, which may differ (for example, cf. Article 12 of the draft RTS – see Q10 below). At the very least, the RTS should state that the choice of a different method by supervisory authorities should be avoided wherever possible, provided that the bank has already chosen an acceptable method. Any divergence from this principle should be limited to substantiated exceptions. Conversely, where an institution has not chosen a method and contacts supervisory authorities with a request for clarification, a decision by supervisors is required to provide legal certainty. We are also concerned as to whether the supervisors involved will in fact have the resources to carry out the analyses required for decisions on a case-by-case basis within a reasonable period of time.

We request that a clarification be added to the RTS that the new definition of "undertaking" exclusively relates to [Article 18 (3) of the CRR].

Specific comments

Q1. Are there undertakings which do not comply with the definition of a financial institution or ancillary services undertaking of Regulation (EU) 575/2013 which should be included in the prudential scope of consolidation? Please explain and provide examples of these entities.

No.

Q2. Do you consider SSPEs financial institutions? When SSPEs are consolidated for accounting purposes, do you also consolidate them for prudential purposes? Please differentiate in your answer between the situation when SRT is met and when it is not met (the institution originates the securitisation); and when the institution acts as an investor on the securitisation vehicle (whether this is a SSPEs or a special purpose entity used to set up securitisations) or sponsors the securitisation transaction.

We advocate that securitisation special purpose entities ("SSPEs") and single-purpose entities ("SPV-Sec") should not be classified as "financial institutions" within the meaning of Article 4 (1) no. 26 of the CRR, nor as "ancillary services undertakings" within the meaning of Article 4 (1) no. 18 of the CRR. The reasons for our position are as follows:

The classification as securitisation special purpose entity (SSPE) is based on the provisions of Article 4 (1) no. 66 of the CRR, according to which the activities of a securitisation special purpose entity are limited to carrying out one or several securitisations, and to the activities appropriate for accomplishing that objective. Its structure is intended to isolate the SSPE's obligations from those of the originator; the holders of the beneficial interests [in the SSPE] have the right to pledge or exchange those interests without restriction. Likewise, the new Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation (Regulation 2017/2402/EU dated 12 December 2017 – the "STS Regulation") expressly affirms the special status of securitisation special purpose entities, distinguishing them from financial institutions (Article 2 no. 2 of the STS Regulation). Even enterprises not covered by the securitisation definition in Article 2 no. 2 of the STS Regulation, and which thus do not qualify as SSPE (e.g. where the element of tranching is missing), may have similar characteristics to a single-purpose vehicle (SPV-Sec), and should therefore be treated like SSPEs for the purposes of prudential consolidation.

SSPEs and SPV-Secs are legally designed as single-purpose entities, which means that their business activities are exclusively limited to purchasing certain receivables and refinancing the purchase price by issuing asset-backed securities or other financial instruments. Specific contractual provisions prevent SSPEs or SPV-Secs from entering into other activities, or from assuming other business risks. This ensures that the purchased receivables and related collateral are fully available as collateral cover to creditors.

Any potential requirement under commercial law to include such special purpose entities into consolidation (under IFRS 10) should not automatically lead to inclusion for the purposes of prudential consolidation; instead, these entities should be deconsolidated for prudential purposes.

This deconsolidation is in the interests of consistency when measuring the risks associated with, and calculating capital charges for, positions which have already received appropriate treatment within the overall securitisation structure under the securitisation framework. Consolidating these special purpose entities and the capital requirements for their assets would override the application of the securitisation framework without making the treatment of these assets any more commensurate with the actual risk involved. This is true for ABS as well as ABCP programmes. The following description of the effects on an ABCP programme illustrates the problem.

Especially as far as ABCP programmes are concerned, consolidation under commercial law – in accordance with IFRS 10 – may reflect the fact that the sponsor exerts significant influence over the ABCP programme, which requires the sponsor to consolidate the ABCP programme in accordance with IFRSs. At the same time, in accordance with the new STS Regulation, the sponsor usually also acts as the liquidity facility provider (pursuant to Article 25 (2) of the STS Regulation, it is in fact obliged to do so). If each special-purpose entity were to be consolidated, application of the Internal Assessment Approach pursuant to Article 259 of the CRR (Article 265 of the revised CRR) or any other method of calculating risk-weighted exposures of securitisation positions to such ABCP programme as a whole or the underlying special-purpose entities at group level would no longer make sense as the structural features of the specific securitisation transactions – in particular credit enhancement techniques such as tranching, overcollateralisation, excess spread – would not be taken into account. Instead, sponsors would be required to apply the regulatory framework for unsecuritised assets to the receivables purchased by the ABCP programme or the special-purpose entities – usually involving several hundred thousand different counterparties. This is not only impossible from an administrative factual perspective, but also not adequate from a prudential point of view.

Moreover within the scope of ABCP programmes, enterprises usually sell receivables for the purpose of funding their working capital requirements, where the sponsoring bank does not hold suitable information with respect to such receivables (and is not able to get such information due to data protection rules) in order to apply capital backing in accordance with the IRBA or other methods. Since the sellers of such receivables are usually non-banks, the aspect of significant risk transfer is irrelevant for this analysis.

Besides the consolidation issue affecting ABCP sponsor banks, deconsolidation is the prerequisite for equity relief with originator banks in case of ABS, following effective risk transfer from the institution (in its capacity as originator) to the securitisation special purpose entity. In the absence of prudential deconsolidation, the institution would be forced to maintain capital for the receivables transferred to the securitisation special purpose entity with legal effect, thus negating any capital relief for the institution. Unless risk is transferred with legal effect (constituting a significant risk transfer), according to applicable accounting standards, beneficial ownership of the receivables will remain with the originator (and will remain on the originator's balance sheet) in spite of the legally effective sale to the securitisation special purpose entity. Likewise, from a regulatory point of view, in this scenario securitised receivables would still require capital backing even if the relevant entity was deconsolidated, due to the receivables remaining on the originator's balance sheet. In this case, the issue as to whether the originator has invested in securitisation exposure issued by the securitisation special purpose entity is no longer relevant. This is because pursuant to Article 245 (2) sentence 2 of the CRR, where the originator has not transferred significant credit risk, it need not calculate risk-weighted exposure amounts for any positions it may have in the securitisation in question but shall continue including the securitised exposures in its calculation of risk-weighted exposure amounts as if they had not been securitised. Only in cases where a significant effective risk transfer has taken place in accordance with the CRR, must the originator cover risk-weighted exposure amounts of securitisation exposures held with capital, pursuant to Article 245 (2) sentence 1 of the CRR. The decisive factor for the purposes of consolidation, therefore, is whether a significant risk transfer has taken place.

Ultimately, the prudential consolidation of securitisation special purpose entities and single-purpose vehicles would also contradict the regulation of shadow banks, which explicitly states that such entities must be classified as shadow banks (EBA Guidelines 2015/20, sections 8 and 11), irrespective of any consolidation under commercial law. This means that corresponding limit restrictions must be observed. Prudential consolidation would thus contradict the intent of shadow banking regulation.

We urge the EBA to also represent the arguments against the requirement to consolidate securitisation special purpose entities and single-purpose vehicles vis-à-vis the European Commission. We believe that different interpretations in different member states must not lead to demands for broader prudential consolidation obligations.

In its Opinion, the EBA urged the European Commission, the European Parliament and the Council "to give consideration to further possible amendments to the definition of 'ancillary services undertaking' and 'financial institution'", in order to resolve inconsistencies in the CRD IV and the CRR. In this context, the EBA proposes to review the list of activities in Annex I of Directive 2013/36/EU ("CRD IV") with regard to prudential relevance – arguing that this is the only way to resolve gaps or different treatment of securitisation special purpose entities, single-purpose vehicles, real estate companies as well as investment funds, thus removing scope for interpretation.

This assessment must be decided upon on Level 1, a process which cannot – and must not – be pre-empted.

We would like to ask the EBA for clarification that it will not interfere with the securitisation rules based on the principle of risk transfer. In this context, we refer to the European Commission's initiative to promote simple, transparent and standardised securitisations (STS Regulation), whereby securitisation structures are considered a key element of Capital Markets Union, to mobilise capital and facilitate a return to sustained growth in the EU. Specifically, this applies in particular to ABCP programmes, which are recognised for their important contribution to the financing of the real economy. Likewise, a framework for high-quality securitisations in the EU can also promote integration of EU financial markets, helping to diversify the sources of funding. The recently-established STS Regulation has set out comprehensive requirements for simplicity, standardisation and transparency which clearly regulate the transfer of risks involved in securitisation. Against this background, we can see no reasons which would justify the prudential consolidation of securitisation special purpose entities or comparable single-purpose vehicles.

It needs to be ensured in any event that such a regime does not in effect invalidate the sponsor's Internal Assessment Approach for ABCP transactions, or the originator's possibility to achieve capital adequacy relief, by virtue of an effective and significant risk transfer pursuant to Articles 243 and 244 of the CRR.

Q3. Do you currently use the method of proportional consolidation for the consolidation of subsidiaries in accordance with Article 18(2) of Regulation (EU) No 575/2013? If proportional consolidation is used, please explain if the conditions included in Consultation Paper are met.

-

Q4. Do you have any comment on the conditions established in this Consultation Paper to apply proportional consolidation pursuant to Article 18(2) of Regulation (EU) No 575/2013?

Implementation of proportional consolidation, as currently provided in Article 18 (2) of the CRR, appears to be difficult. This is because proportional consolidation is no longer permitted in accordance with IFRS: implementation would therefore require banks to establish a fundamentally new technical consolidation procedure.

Pursuant to Article 4 (2) of the draft RTS, the competent authority shall have at least three months to decide whether to grant permission to apply proportional consolidation. A condition should be added to this provision, setting out that this decision must be taken within a maximum period of six months. This is the only way in which institutions can achieve the necessary planning certainty.

Q5. Do you agree on the criteria for the determination of the consolidating entity? Do you experience a different situation currently?

-

Q6. Do you have any comment on the elements included in this Consultation Paper for the application of the 'aggregation method' pursuant to Articles 18(3) and (6)(b) of Regulation (EU) No 575/2013? Please explain.

Concerning Article 18 (3) of the CRR:

Given the wording of Article 18 (3) of the CRR, the consultative document refers to Directive 2013/34/EU (the legal successor to Directive 83/349/EEC) – specifically, to Article 22 (7), which has two sub-sections:

The **first sub-section** – **Article 22 (7a)** of **Directive 2013/34/EU** - refers to undertakings which do not have a parent-subsidiary relationship but have agreed to subject the target undertaking to unified management, by virtue of a contractual agreement or under the memorandum and articles of association. Entities covered by this sub-section largely correspond to 'joint operations' as defined in IFRS 11.15, which are accounted for using the equity method, in accordance with IFRSs – whereas EBA proposes to apply its aggregation method (Article 9 of the draft RTS; see below). This diverging treatment would cause significant additional efforts. We would welcome it if consistency of consolidation methods with IFRS rules could be established, instead of creating a new consolidation method for these cases.

The **second sub-section** refers to undertakings described in Article 22 (7b) of the Directive: The administrative, management or supervisory bodies of that undertaking and of one or more other undertakings, to which it is not connected in a parent-subsidiary relationship, consist in the majority of the same persons in office during a defined period of time. This is outside the scope of IFRSs. EBA aggregation pursuant to Article 8 in conjunction with Article 9 of the draft RTS is not based on IFRS accounting. Given the definition in Article 2 of the draft RTS, the concept of "undertakings" (as provided in Article 18 (3) of the CRR) would need to be construed with a wide interpretation. This would involve a substantial extension of the scope of consolidation, which we oppose.

Concerning Article 18 (6) (b) of the CRR:

The provisions of Article 9 of the consultation document raise the following practical questions:

> How is the required consistency of recognition and measurement supposed to be implemented in practice, upstream to EBA aggregation, for non-group entities?
>
> How can institutions ensure that all undertakings included in the prudential scope of consolidation of the partner entity to be aggregated (pursuant to Article 18 of the CRR) are in fact included in the EBA aggregation method?
>
> Given data required from third parties, how are deadlines supposed to be met – especially during the course of a year?
>
> How is a distinction between "related" and "not related to losses" supposed to be consistently implemented in practice, given that it will ultimately lead to application of rules governing non-controlling interests ("minority interests"; Articles 81-88 of the CRR) in the EBA aggregation method?

Q7. Do you have any comment on the application of proportional consolidation according to Article 18(4) of Regulation (EU) No 575/2013?

Our understanding is that the conditions for Article 10 of the draft RTS (which specifies the requirements of Article 18 (4) of the CRR) are only applicable if the undertaking in which an investment is held is not a subsidiary as defined in Article 4 (1) no. 16 of the CRR – since in that case, such an undertaking would have to be fully consolidated pursuant to Article 18 (1) of the CRR, unless proportional consolidation has been permitted under Article 18 (2) of the CRR. Consequently a subsidiary as defined in Article 4 (1) no. 16 of the CRR has to be – consistently with the CRR - fully consolidated for prudential purpose even if the equity method is used for accounting purpose.

We advocate restricting the obligation for proportional prudential consolidation by linking it to a minimum threshold, and by introducing a *de minimis* rule. Pursuant to IFRS 11, undertakings referred to in Article 18 (4) of the CRR are accounted for using the equity method. It would be desirable if prudential consolidation methods were to converge with consolidation methods under commercial law, thus ensuring identical methods are applied – otherwise, the RTS would establish a new 'accounting fact' to be recognised.

Pursuant to Article 10 (1) (c) of the draft RTS, joint management requires the unanimous consent of the parties for relevant activities. We believe that this goes beyond the requirements set out in Article 18 (4) of the CRR and that the requirement for unanimity should therefore be dropped. In our view, the sole criterion should be the existence of a formal joint management, not just joint management arrangements which have arisen by chance. Our understanding is that this has been the usual interpretation up to now and is also in line with the requirements of commercial law. We would recommend, in addition, using the same wording in Article 11 (4) (a) of the draft RTS for the comparable provision for cases under Article 18 (5) of the CRR. The current wording of Article 11 (4) (a) ("without unanimous consent") would create a different requirement to that in Article 10 (1) (c) ("requires the unanimous consent").

Q8. Do you have any comment on the criteria established in this Consultation Paper on the prudential treatment of other participations or capital ties (including the equity method) under Article 18(5) of Regulation (EU) No 575/2013? Please explain.

Article 11 (4) of the draft RTS – especially in conjunction with the catalogue of criteria set out in Article 11 (5) – will burden institutions with a significant workload.

We do not consider this to be appropriate, firstly due to fundamental considerations.

According to EBA's proposal, enterprises which need to be consolidated pursuant to accounting standards – but which need to be deconsolidated for regulatory purposes – should be accounted for in 'regulatory consolidated financial statements' using the equity method, unless Article 18 (1) or (4) of the CRR is applicable (Article 11 (2) of the draft RTS). In such circumstances, supervisory authorities are supposed to monitor the valuation of deconsolidated shares carried on the 'regulatory consolidated financial statements'. Whilst no further details are provided concerning measurement of such deconsolidated shares , it is probably fair to assume that accounting for them using the equity method is preferred, based on the existing interpretation of Article 18 (5) sentence 2 of the CRR. This will also burden institutions with substantial additional efforts.

We also take a critical view of the claim raised by EBA in Article 11 (3) of the draft RTS that it is authorised to review the methods applied to measure investments which may be deconsolidated for prudential purposes. In our view, the reservations concerning measurement and implied joint decision rights which competent authorities might assert on the basis of Article 11 (3) of the draft RTS are not justified, nor do we see any related indications in the CRD or the

CRR. As we see it, such values must regularly be determined from applying IFRS rules, meaning that they are determined without doubt by virtue of measurement rules under commercial law.

Excursus: accounting using the equity method

Accounting for investments using the equity method is highly complex in practice. This requires fair value measurement of the target company, in accordance with IFRS 3; it comprises carrying forward off the balance sheet disclosed reserves and encumbrances at the time of acquisition – where applicable, including conversions into the respective functional currency, as well as recognising unscheduled write-downs on goodwill carried forward (impairment test in accordance with IAS 36). Looking at the treatment of deferred taxes in this context, this raises the issue of whether such a set of "prudential financial statements" would still rest on the foundations of theoretical concepts underlying deferred taxation. Also from a purely procedural point of view, the affected banks have to apply valuation rules in accordance with local GAAP to their consolidated financial statements for prudential purposes as well.

It would at least be desirable to refrain from enforcing at-equity accounting for regulatory purposes where this is not provided for under IFRSs, in order to avoid tying up resources without any discernible added value.

Secondly, we do not consider the criteria to be appropriate in substance.

For example, we reject the criterion for determining the method of prudential consolidation, as stipulated in Article 11(5) (b) of the [draft] RTS. Amongst other things, according to the [draft] RTS, when determining the method of consolidation, institutions are supposed to assess to what extent they act as a sponsor by managing or advising the undertaking on how to place collateral on the capital markets, or by providing liquidity. From our point of view, such an advisory function assumed by an institution might give rise to consolidation under commercial law, given that the institution might exercise significant influence by providing advisory or similar services. Yet we do not consider this sufficient to satisfying the condition of exercising control, which would justify prudential consolidation.

Other criteria stipulated are largely captured via Pillar II, and thus not relevant for the purposes of consolidation.

Moreover, it is not clear to us which prudential consolidation method would need to be applied, for example, to undertakings in which no (or only minor) capital investments are held, or where only joint control can be exercised. If Article 18 (5) of the CRR were to be applicable, full consolidation, proportional consolidation, or the equity method would need to be applied (cf. Article 11). Based on Article 18 (6) (a) of the CRR, only full consolidation would be applicable (cf. Articles 11, 12 and 14 of the [draft] RTS). In accordance with IAS 28, commercial law exclusively provides for accounting using the equity method. In the interest of minimising expenditure, we consider the divergence of prudential and commercial-law consolidation methods to be unacceptable; we advocate harmonising both methodical approaches.

We object to any prudential consolidation being invoked by reference to commercial law, even though no explicit control or joint control is being exercised. In the absence of shareholdings or voting rights under company law, or where only a minor stake is being held, if investors are merely exposed to variabilities or have little influence (as defined in IFRS 10/11 or IAS 28), then detailed group reporting – applying consistent measurement methods in accordance with IFRSs – cannot be enforced in individual cases since majority shareholders are not prepared to bear the costs involved, and/or to permit such information or resources being tied up. Hence, applying the equity method would be easier to organise and enforce.

Comments on step-in risk

When giving discretion to the competent authority to require consolidation, over and above the types of investment stipulated in Article 18 (1) and (4) of the CRR, the draft RTS also refers to the criteria developed by the Basel Committee for the purpose of incorporating step-in risk, within the framework of Pillar II. We strongly reject this. At present, the Basel Committee has included **step-in risk** as a Pillar II requirement, whereby supervisory authorities define measures to counter any potential step-in risk based on institutions' self-assessments. EBA's consultative document also states that the guidelines on identification and management of step-in-risk, as published by the Basel Committee at the end of October 2017, pursue a Pillar II approach (cf. page 5 of the consultative document). Following careful consideration of the pros and cons, a decision was taken at the Basel Committee level not to include step-in risk within the Pillar I framework. Hence, the RTS should refrain from incorporating elements of the Basel Committee's guidelines on step-in risk into a regulation under Pillar I. Moreover, besides the option of countering step-in risk exposure by including an affected entity into the scope of prudential consolidation, there are alternative options at the Basel Committee level (such as imposing addition large exposure limits, risk weights, or specific inclusion of entities in stress scenarios). It would be unreasonable to assume that consolidation will in future be required in all cases where step-in risk has been identified.

Consolidation requirements primarily deal with the issue of whether – and to what extent – an institution has control over another entity. Pursuant to the EBA's current consultative document, when assessing consolidation requirements, supervisors might also require institutions to consolidate on the grounds of step-in risk factors. As outlined, step-in risk focuses on the issue of which undertakings would be supported in the event of a crisis, and how such risks should be assessed. Such considerations should not automatically trigger a consolidation requirement, especially since it cannot be assumed that the institution would actually be able to influence the other entity to any great extent. Nor would it necessarily be able to insist that the entity provide it with the data needed for prudential reporting at group level.

Yet implementation of the current consultative proposal might in fact force institutions to carry out consolidation, even prior (or in parallel) to the planned self-assessment process, which might indicate alternative measures.
This would run counter to the Pillar II approach pursued by the Basel Committee – moreover, it would pre-empt the still-outstanding EU implementation. We therefore advocate leaving out measures implementing step-in risk issues from the consultative document altogether.

Q9. Do you agree with the impact assessment and its conclusions? Please provide any additional information regarding the costs and benefits from the application of these draft RTS.

We advocate against integrating the Basel Committee's guidelines on identification and management of step-in-risk into the RTS (cf. item 5 of the [draft] RTS, option 2.1). By integrating step-in risks into the RTS, the EBA would overstep its mandate. Moreover, we believe that that criteria presented in the guidelines do not facilitate determining an alternative to prudential consolidation.

Q10. Please provide any additional comments on the Consultation Paper.

Significant influence without holding a participation, pursuant to Article 18 (6) (a) of the CRR

We advocate harmonising consolidation methods under commercial law and under prudential requirements. We believe that where a joint venture is accounted for at equity under commercial law, applying the same method should also be permitted for prudential purposes.

We welcome the objective of assigning more importance to proportionality in banking regulation. Yet the principle of proportionality also means that larger institutions must not be subjected to unjustified burdens from regulatory reporting. This also relates to the materiality threshold for mandatory consolidation of very small enterprises. In this context, Article 19 of the CRR defines a threshold of the lower of €10 million or 1% of total assets of the parent entity. In our view, however, the fixed €10 million total assets threshold is not appropriate for larger institutions, since it leads to significant expenditure for consolidating very small enterprises, and their inclusion in reporting and disclosure requirements (which are substantial for large banks) – without enhancing transparency concerning a bank's risk situation. We would therefore like to ask the EBA to advocate a more appropriate materiality threshold vis-à-vis the European Commission.

On a similar note, we advocate against the features stipulated in Article 12 (1) of the [draft] RTS, which EBA wishes to use as evidence of significant influence (as defined in Article 18 (6) of the CRR) being exercised by institutions in the absence of participations or other capital ties. We doubt whether significant influence may exist merely on the grounds of material transactions with the undertaking (item (iii)), or by virtue of essential technical information (item (v)). As we see it, these features appear to be inconsistent with the provisions of Article 2 of the [draft] RTS, according to which significant influence implies an institution's ability to participate in the financial and operating policy decisions of another undertaking.

Recitals

Recital 2 of the draft RTS uses the concept of "undertaking" in connection with Article 18 (2) of the CRR. In this context, a clarification should be provided that Article 18 (2) of the CRR constitutes an exception to Article 18 (1) of the CRR, and can therefore relate to institutions and financial institutions only.

Recital 9 provides the option of proportional consolidation for situations other than those covered by Article 18 (4) of the CRR. This calls for clarification as to the extent to which this is consistent with the wording of the CRR.

Accounting Standard (IFRS vs. national GAP)

The standard refers exclusively to IFRS. References to national accounting standards should be added to make the Standard applicable for all institutions.
