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EBA CP/2012/04 - Consultation Paper on Draft ITS on Disclosure for Own Funds

The Division Bank and Insurance of the Austrian Federal Economic Chamber, as representative of the entire Austrian banking industry, appreciates the possibility to comment on "EBA Consultation Paper on Draft ITS on Disclosure for Own Funds by Institutions (EBA/CP/2012/04)" and would like to submit the following position:

General remarks:

The direct comparison of final Basel III provisions and transitional provisions forces the institution to publish the own funds structure under fully implemented Basel III regulation already during the transitional period. Market participants will anticipate an institution's market compliance thus endangering the original intention of the transitional period. Therefore the publication of own funds under full Basel III calculation is adverse to the intention of the phase-in period, because this should offer banks more time to set suitable measures to build up additional capital through the allocation of reserves or new issuances. Thus unintended impacts on capital markets and lending to the economy must be expected.

Moreover attention has to be paid to the implementation outside the EU. The on hand draft ITS requires credit institutions to exercise great transparency regarding own fund instruments thereby allowing a comparison with other credit institutions in the EU. However this raises the question if this could facilitate the information access for US rating agencies without knowing how the respective disclosure requirements are implemented in the US. This fact has to be borne in mind with regard to its competitive impact in a global context. A competitive disadvantage for the European banking industry through comparatively too extensive transparency has to be avoided in any case.

In addition we would like to refer to the fact that the basis text passages of the CRD IV/CRR have changed meanwhile. Therefore this change has to be reflected accordingly also in the ITS.

Moreover we would like to make the point that in regard to significant subsidiaries the disclosure requirements should be confined to a necessary minimum. Therefore the proposed extent of disclosure requirements seems to be inappropriate for significant subsidiaries.

Finally it has to be clarified whether the obligation to fulfill the reporting requirements for the Quantitative Impact Study (Basel 3 - QIS) will end after implementation of the new own funds disclosure requirements or not.

Detailed Comments:

Q01: Are the provisions included in this draft ITS (including annexes) sufficiently clear? Are there aspects which need to be elaborated further?

Ad Annex I - Balance Sheet Reconciliation Methodology

The draft ITS assumes that the published financial statements and the data used for regulatory reporting are based on the same accounting standards. In Austria, this is currently not the case: published consolidated financial statements are usually based on IFRS whereas regulatory reporting is based on local GAAP.

The reconciliation template proposed in Annex I may oblige Austrian banks to prepare up to three consolidated financial statements: in addition to the published financial statements based on IFRS, banks would have to prepare an additional set of IFRS financial statements based on the regulatory scope of consolidation. To provide a reconciliation to the amounts used for regulatory reporting, an additional set of consolidated financial statements based on local GAAP would have to be prepared.

In addition, financial institutions are currently not obliged to set up a complete consolidated balance sheet based on accounting standards used for regulatory reporting and the regulatory scope of consolidation. For regulatory purposes, consolidation is based on risk reporting which differs from financial reporting not only with regard to the scope of consolidation but also regarding valuation and classification of line items. A detailed reconciliation will require high effort which in our opinion is disproportionate to the value added for users and is therefore problematic.

The template for balance sheet reconciliation from the published financial statements to regulatory reporting items is requested in high granularity and at least as detailed as the balance sheet with items disclosed side by side and with clear correspondence (Annex I, point 3). This high level of detail might to some extent be adequate for the informational need of supervisory authorities but not for disclosure towards third parties.

For external interested parties reconciliation on aggregated level is considered more meaningful while a high level of granularity could be misleading. Comparison of balance sheet and regulatory reporting positions requests extensive explanation to avoid misinterpretations if direct comparability is assumed. In fact, frameworks differ considerably as the objectives of financial and risk reporting differ per se.

Reconciliation on aggregated level together with meaningful explanations will better meet market participants' informational needs. From our experience, market participants are more interested in details regarding reconciliation of own funds to local GAAP or IFRS equity than in a reconciliation of balance sheet items.

The ITS states that disclosure of the reconciliation from financial to regulatory balance sheet is based on the published financial statements which are disclosed quarterly. The reconciliation has to be done only on audited financial statements (according to article 424 para 1 (a) of CRR)

with an audit done only yearly under regular business activity. It should be clearly stated that the disclosure of this reconciliation is required annually and is not required in case of an interim audit.

Questions arising with regard to Annex I

On page 8 of the CP it is stated that a reconciliation methodology will be required starting with January 1st, 2013. We would like to ask when the new own funds disclosure requirements are planned to be finalized and published.

Question regarding comparison purposes: should the figures required within disclosure requirements be comparable to the previously disclosed figures, and if yes:

- which date is planned as the very first reference date (ye 2012? Ye 2013?)
- how would the comparison be considered within the disclosure requirements?

Question regarding reconciliation balance sheet/own funds:

In case of restatements within p/l and/or balance sheet how should such a restatement be considered within reconciliation

- if the restatement has an impact on the balance sheet but not on own funds,
- if the restatement influences both the balance sheet and the own funds.

In case of an obligation to consider restatements within own funds disclosure requirements: at which point in time should the restatement be considered within the own funds disclosure requirements:

- at the same point in time, when the restatement is considered within the balance sheet (p/l)?
- at the next reporting date in own funds disclosure requirements?
- at any other point in time (in this case we kindly want to ask EBA to define and explain)?

Ad Annex II - Capital instruments main features template

For instruments where a prospectus has been published by the institution the main features template is not considered necessary. As the prospectus offers more information by giving the entire conditions of the issuance, it leaves no room for interpretation. An additional template classifying issues into more or less rough categories could leave room for misinterpretation whenever users no longer refer to the prospectus itself. Furthermore for instruments which are not publicly issued, disclosing the terms and conditions according to Annex II might limit the access to some sources of capital in the future.

Moreover it is stated that the capital feature template will have to be disclosed by institutions from 2013 onwards. It should be clarified from which date exactly the capital feature template will be required (31.12.2013?).

Ad Annex VI - Transitional own funds disclosure template

As mentioned in the introduction the direct comparison of final Basel III provisions and transitional provisions forces the institution to publish the own funds structure under fully implemented Basel III regulation. Market participants will anticipate an institution's market compliance thus endangering the original intention of the transitional period.

Q02: Are the provisions provided for the balance sheet reconciliation methodology sufficiently clear?

See above Q01.

Q03: Are the instructions provided in the template on the main features of capital instruments, in the general own funds disclosure template and in the transitional disclosure template sufficiently clear? Should the instructions for some rows be clarified? Which one in particular? Are some rows missing?

Ad Annex II - Capital instruments main features template

For the proposed template further specification is deemed necessary for line 6 “instrument type” where a classification must be given by instrument type. A definition of instrument types is necessary (in line with EBA list 24 (4)).

Ad Annex IV - Own funds disclosure template

The level of aggregation requested in the template seems to be adequate for parties addressed and in comparison to the CP50 ITS on reporting - Annex I, where further details and position breakdowns have to be delivered.

To be able to guarantee consistency and correctness of information delivered and to facilitate comprehensibility we ask to allocate positions (numbers of rows) of the respective CA-template of CP50 ITS on reporting - Annex I to reporting positions in the own funds disclosure templates (for example: Own funds template/row 1 = CA-template 1/row 030).

Ad Annex VI - Transitional own funds disclosure template

For this template again a position matching from CP50 ITS on reporting - Annex I to column (A) Disclosure date and (C) “Amounts subject to pre-CRR treatment or CRR prescribed residual amount” is considered highly useful.

Yours sincerely,

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