CONSULTATION PAPER ON DRAFT REGULATORY TECHNICAL STANDARDS ON THE IDENTIFICATION OF GROUP OF CONNECTED CLIENTS UNDER ARTICLE 4 PARAGRAPH 1 NUMBER 39 OF REGULATION (EU) NO 575/2013

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Consultation Paper

 Draft Regulatory Technical Standards

on the identification of a group of connected clients under Article 4 paragraph 1 number 39 of Regulation (EU) No 575/2013

**Q1. Could you please indicate, if the approach of sections 4, 6 and 7 of the existing EBA guidelines, now transposed in the Articles of the draft RTS, remains sound and is implementable with no major challenge or unduly high costs. Please elaborate..**

According to the consultation draft, the guideline requirements in sections 4, 6 and 7 were to be fully transposed into the RTS. However, these requirements have been tightened – even though according to the executive summary of the consultation draft these were to be transposed “without substantial changes”. In particular, circumstances that may lead to a group of connected clients due to economic dependencies are in danger of losing their indicative character due to the wording chosen in Article 2(1) (see question 5) and becoming circumstances in which a group of connected clients would be formed automatically, with no case-by-case assessment. In our opinion, Article 2(2) of the RTS does not fit with the concept of a single risk due to economic dependency, which is established subject to an individual case review based on at least the circumstances set out in paragraph 1, and is superfluous in our view. Either there is a single risk due to economic dependency or there is not. In our opinion, there is no scope to refute the single risk where one or more of the circumstances outlined in paragraph 1 is affirmed.

These RTS would indeed incur implementation costs due to the required technical changes and amendments to the banks’ documentation and processes. This should be avoided where possible.

**Q2. Have you identified any additional aspect(s) that would require clarification? In this vein, would you see the need for further illustrative examples (and if yes, on which precise situation or specific case)? Please elaborate.**

**Q3. After considering the circumstances set out in Article 1 that constitute a single risk by means of control, could you please indicate if the described circumstances are sufficiently clear? Please elaborate.**

We assume that use of the phrase “may be deemed” means that the criteria set out in Article 1(3) continue to represent indicators of a control relationship.

**Q4. Is the additional Scenario C 0 related to the determination of a group of connected clients by means of control, listed in Section 3.4.1 (Groups of connected clients based on a control relationship), sufficiently clear? Would you see need for further illustrative examples of a control relationship?**

We appreciate the example provided. The example seems to be targeted to SSPEs, we would appreciate if it could be clarified that the example holds for SPE/SPV in general. Moreover, it would be helpful if additional examples would be provided for structures (other than SPV/SPE) where the risk is segregated but control relationship exists.

**Q5. After considering the circumstances set out in Article 2 that constitute a single risk by means of economic dependency, could you please indicate if the described circumstances are sufficiently clear? Please elaborate.**

We would recommend retaining the wording of the guidelines, which guarantees a risk-appropriate case-by-case assessment. As we understand it, the RTS take the approach that a single risk should normally be assumed to exist in the circumstances set out in Article 2(1)(a) to (j). This assumption can only be rejected in exceptional cases. Firstly, this is at odds with existing practices since paragraph 23 of the current guidelines say: “Institutions should consider, in particular, the following situations when assessing economic dependency:”. Second, the proposed RTS frequently fly in the face of practical experience. Economic dependency by no means always exists in all the circumstances mentioned. The described circumstances therefore lend themselves to use as examples, but not de facto assumptions.

As we see it, the indicative nature of the signs of economic dependency would be turned into binding criteria, especially given the proposed wording in Article 2(1). This would encourage a mechanistic application, which would run counter to a risk-appropriate case-by-case analysis of economic dependency.

The description of the circumstances, by contrast, use indeterminate terms such as “significant” (c, d, e) and “excessively” (c, d, f, h), which, in line with current practices, again point to a case-by-case assessment. In our view, all circumstances should continue to be seen as possible indications only.

We therefore suggest rewording Article 2(1) as follows:

“Two or more natural or legal persons constitute a single risk because *of* ***economic depende*ncy *if*** they are interconnected in a way that, where one of them were to experience financial problems, in particular funding or repayment difficulties, the other, or the others would also be likely to encounter financial problems**.**~~,~~ ***Institutions should consider* ~~in~~** at least the following circumstances ***when assessing economic dependency****:”*

**Q6. In point (c) of Article 2(1), would you prefer following a quantitative approach by replacing the term “significant part” with a threshold of “50% or more” as envisaged in point 1 of LEX 10.16? What would be the advantages or disadvantages? Please elaborate.**

We strongly oppose the introduction of a threshold. There would be a danger that economic dependency would no longer be identified on a case-by-case basis but that groups of connected clients would be formed mechanistically by applying predefined thresholds. This would not be appropriate, in our view. Rigid thresholds would make it more difficult to detect actual concentration risk. Economic dependency should continue always to be analysed on an individual basis. After all, even if the threshold were met, this would not necessarily mean that the counterparty would default.

The inability to adequately validate thresholds also makes them an unsuitable means of identifying dependency. On top of that, their blanket application would render them arbitrary: too often, they would simply not be able to accommodate a specific case. We therefore recommend retaining the term “significant” and continuing to use the circumstances described as possible indications of economic dependency.

**Q7. What is your view on the wording “that cannot be replaced in a timely manner without excessively increased costs” compared to the wording used in the GL “that cannot be easily replaced”? What do you think about this change, is it more comprehensible? Please elaborate.**

**Q8. Is the additional Scenario E 8 related to the determination of a group of connected clients by means of economic dependencies, listed in Section 3.4.2 (Establishing interconnectedness based on economic dependency), sufficiently clear? Would you see need for further illustrative examples of an economic dependency relationship? Please elaborate.**

**Q9. After considering the circumstances set out in Article 3 that constitute a single risk by means of the combined existence of control and economic dependencies, could you please indicate if the described circumstances are sufficiently clear? Please elaborate.**

**Q10. Is the additional Scenario E 7 related to the determination of a group of connected clients by means of the combined existence of control and economic dependencies, listed in Section 3.4.3 (Relation between interconnectedness through control and interconnectedness through economic dependency), sufficiently clear? Please elaborate**