Interessengemeinschaft Kreditkartengeschäft
c/o PaySys Consultancy GmbH
Im Uhrig 7
D-60433 Frankfurt a.M.

hgodschalk@paysys.de
escher@gsk.de
T: +49-69-951177-0
Id.-no. EU-Trans. Reg:
209142612442-39

European Banking Authority (EBA)
One Canada Square (Floor 46)
Canary Wharf
London E14 5AA|
United Kingdom

June 12, 2015

Consultation Paper: EBA/CP/2015/06

Draft EBA Guidelines on limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework under Article 395 para. 2 Regulation (EU) No. 575/2013

Dear Madam or Sir,

We refer to you on behalf of the German *Interessengemeinschaft Kreditkartengeschäft* (Interest Group Credit Card Business, hereinafter referred to as "IK").

The IK is a competition neutral platform without legal capacity for entities, which act in the credit and debit card business in Germany (Issuer, Acquirer, Network Service Providers, Processing Entities, Licensors), registered in the EU-Transparency Register under aforementioned Ident-no. The following members of the IK have contributed to this opinion:

- Atos Worldline GmbH
- B+S Card Service GmbH
- Chase Paymentech
- Commerzbank AG
- ConCardis GmbH
- Deutsche Telekom AG
- DVB Logpay GmbH
- easycash GmbH
- Elavon Financial Services Limited, Germany
- EVO Payments International GmbH
- First Data Deutschland GmbH
- InterCard AG
- Lufthansa AirPlus Servicekarten GmbH
- Postbank P.O.S.
- TeleCash GmbH & Co. KG
- transact Elektronische Zahlungssysteme GmbH
- Verband der Sparda-Banken e.V.

With the following remarks, we will give comments on the Consultation Paper: Draft EBA Guidelines on limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework under Article 395 para. 2 Regulation (EU) No. 575/2013, EBA/CP/2015/06 (hereinafter referred to as "the EBA's Draft" or "the EBA Guidelines"). All references made to enumerations without additional reference to a specific directive or regulation do also refer to "the EBA's Draft".

Comments on the EBA's Draft

With our comments on the EBA's Draft we would like to encourage EBA to clarify that payment institutions as well as electronic money institutions, duly regulated and authorized under the EU-Payment Services Directive 2007/64 ("PSD-1")("Payment Institutions")/ EU E-money Directive 2009/110 ("EMD"), should be excluded from the scope of the EBA Guidelines, also if credit related to payment services is granted according to art. 16 para. 3 PSD-1.

In consideration of the EBA's Draft Cost-Benefit Analysis/ Impact Assessment as well as of the EBA Report of 27 November 2014 ("Report to the European Commission on the perimeter of credit institutions established in the Member States", hereinafter "EBA's Report") we understand that aforementioned exclusion will only serve for clarification purposes and is already in line with EBA's approach.

I. Definitions according to the EBA's Draft

According to the "Definitions" given in the EBA's Draft (page 18 - 20),

- *shadow banking entities* means undertakings that

  (1) carry out one or more credit intermediation activities;
  (2) are not excluded undertakings

  and

- *credit intermediation activities means bank-like activities involving maturity transformation, liquidity transformation, leverage, credit risk transfer or similar activities.*

Payment Institutions regulated under PSD-1 are not credit institutions according to art. 4 para. 1 no. 1 Regulation 575/2013/EU ("CRR") which are generally out of the scope of shadow banking regulation, especially the EBA's Draft.

According to art. 10 PSD-1 Payment Institutions are required to obtain authorization as a Payment Institution before commencing the provision of payment services. These Payment Institutions may grant credit related to payment services under specified conditions according to art. 16 para. 3 PSD-1 such as: a) the credit shall be granted exclusively in connection with the execution of payment transaction; b) the credit granted in connection with a payment shall be repaid within a short period which shall in no case exceed twelve month; c) such credit shall not be granted from the funds received or held for the purpose of executing a payment transaction; d) the own funds of the Payment Institution shall at all times be appropriate in view of the overall amount of credit granted.

As payment institutions are not explicitly defined as "excluded undertakings" by the EBA's Draft (unlike e.g. insurance undertakings) the definitions of the EBA's Draft could be misunderstood in a manner that payment institutions shall be in scope of the EBA Guidelines on limits on exposures to shadow banking.

Payment Institution

Otherwise, based on the EBA's Draft Cost-Benefit Analysis and Impact Assessment as well as the EBA Report of 27 November 2014 "Report to the European Commission on the perimeter of credit institutions established in the Member States" we understand EBA's view in accordance with the IK's interpretation that loans granted to Payment Institutions shall not be subject to European shadow banking regulation.

II. EBA's Draft Cost-Benefit Analysis/ Impact Assessment

1. According to EBA's Draft Cost-Benefit Analysis and Impact Assessment (page 28 - 29) the mandate of the CRR requires the EBA to set limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework. To act in a manner that is consistent and coherent with Union initiatives in the field of financial regulation and to adopt a risk-based proportionate approach to regulation, as for interpretation of "regulated framework" the EBA prefers the following approach for entities that are not within the scope of prudential consolidation:

   Option 2: Institutions subject to the CRD-IV/CRR and equivalent third country and national *prudential* frameworks **and** entities subject to *prudential frameworks for specific forms of regulated entity* and equivalent third country prudential frameworks should be carved out from the definition of shadow banking entities ("the intermediate approach").

   The EBA states that this intermediate approach is the only reasonable approach to interpretation for the purposes of the Guidelines on limits on exposures to shadow banking.

   According to EBA's chosen option 2 all institutions which are subject to a specific prudential regime – not limited to CRD-IV/CRR – shall be out of scope of the shadow banking regulation.

2. We consider PSD-1 as such a robust prudential regulation framework where credit risk related to payment services is adequately addressed referring to the restrictions of credit related to payment services according to art. 16 para. 3 PSD-1. Furthermore, PSD-1 clearly stipulates capital requirements according to art. 6 - 8 PSD-1 and risk management and control mechanisms requirements according to art. 10 (para. 4) PSD-1 for authorized Payment Institutions. Therefore, it should be clarified that loans to Payment Institutions shall be out of scope of EBA's shadow banking regulation. Payment Institution.

III. EBA Report of 27 November 2014

The EBA Report of 27 November 2014 "Report to the European Commission on the perimeter of credit institutions established in the Member States" further strengthens our view:

On 23 October 2013 the EBA received a request from the Commission to carry out a comprehensive study of various legal and quantitative aspects regarding "credit institutions" and other entities carrying on bank-like activities in the EU. The Commission, in its letter of 3 June 2014, noted the need for further analysis of the financial entities that carry on "bank-like" activities. To this end the EBA conducted a further survey and in part 3 of this survey required the competent authorities to list any entities carrying on bank-like activities which are not covered by any solo prudential requirements (i.e. unregulated entities). In its report of 27 November 2014 "Report to the European Commission on the perimeter of credit institutions established in the Member States" (see page 17) the EBA clarified that PSD-1 is

qualified accordingly as prudential requirements under EU measures and therefore Payment Institution which are regulated under PSD-1 are outside the scope of the survey.

IV. E-Money Institutions

For the same reasons already set out regarding Payment Institutions neither E-Money Institutions should be in scope of shadow banking regulation. Also E-Money Institutions are regulated under EMD which refers in its art. 6 para. 1 S. 1 lit. b) to art. 16 para 3 PSD-1: If payment services are provided, E-Money Institutions are entitled to engage in the granting of credit related to payment services referred to in points 4, 5 or 7 of the Annex to PSD-1, where the conditions laid down in art. 16 para. 3 (and 5) PSD-1 are met.

As outlined above, we consider these requirements as such a robust prudential regulation framework where credit risk is adequately and sufficiently addressed. Consequently, also E-Money Institutions, which grant credit related to payment services in accordance with aforementioned PSD-1 requirements, should be clearly excluded from the scope of EBA's shadow banking regulation guidelines.

V. Proposal for Clarification

Considering our statements, as outlined above, Payment Institutions as well as E-Money Institutions are appropriately regulated under PSD-1/EMD as robust prudential framework where credit risk is adequately addressed. It is for these reasons that Payment Institutions and E-Money Institutions shall not be subject to European shadow banking regulation.

To clarify this regulatory approach the IK suggests to complement the Definitions of the EBA's Draft (page 18 - 20) and to explicitly define Payment Institutions and E-Money Institutions as "Excluded undertakings" listed under point 3 which are not in the scope of "Shadow banking entities".

Best regards

On behalf of the IK (Interessengemeinschaft Kreditkartengeschäft):

Dr. Markus Escher