Comments

Consultation paper on guidelines on the criteria to determine the conditions of application of Article 131(3) of Directive 2013/36/EU (CRD) in relation to the assessment of other systemically important institutions (O-SIIs)

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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-sector 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 more than 2,000 banks.

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I. General comments

The German Banking Industry Committee appreciates the opportunity to comment on the draft guidelines on the criteria to determine the conditions of application of Article 131 (3) CRD IV, in relation to the assessment of other systemically important institutions. Before we embark upon the questions which have arisen during consultation, we would like to make the following three general statements:

Limit the level of data collection

Relevant authorities may decide on what level the necessary data collection shall take place (see page 7 in conjunction with page 11, no. 11). According to the draft guidelines, the following levels are conceivable: consolidated, sub-consolidated, individual or sub-individual (e.g. regarding significant branches/business divisions). In order to ensure a feasible approach to the delivery of indicators from institutions, we strongly recommend that data collection only takes place on the level of legal entities. It would require extensive efforts on the part of the institutions to extract data for smaller entities (e.g. branches) from their FINREP reporting systems – this effort would be disproportionately high and would require yet to another costly manipulation of the reporting systems' landscape.

Ambitious implementation deadline

These guidelines are scheduled to come into force on 1 January 2015 (see page 12, no. 19). Considering the outstanding specification of indicators, in particular the definition of relevant optional indicators by designated national or European authorities, and against the background of the short time frame until the publication of the EBA guidelines, we believe it is appropriate to postpone the date of first-time application. From our perspective, this is the only way to allow for adequate implementation deadlines and appropriate lead times on the part of institutions concerned.

II. Specific comments

Question 1

Can you think of any additional indicators that should be included in Table 1 of Annex 1, or indicators that are better suited to reflect systemic relevance and should replace one or more of the suggested indicators in your jurisdiction? Please provide evidence supporting your view where possible.

Criterion “Importance”

The suggested indicators focus too much, and above all exclusively, on the retail sector. This does not reflect the overall relevance of the institution under review to the real economy, which is the declared aim of this category.

Criterion “Complexity”

Both MiFID and EMIR pursue the regulatory objective of shifting the derivative trade to central counterparties (CCP). Insofar, the “Value of OTC derivatives” indicator is obsolete. Since, in substance, the derivative trade nevertheless represents a correct indicator of the complexity of the transaction, the “Derivatives in trading book” indicator should be chosen instead.

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The suggested indicators fail to reflect the full complexity. In accordance with the BCBS framework on G-SIBs, we suggest that the following two indicators should be included:

- „Value of Trading & AFS Securities less stock of HQLA"
- „Level 3 Assets"

Furthermore, we consider it insufficient to solely describe the cross-border contagion channels via "cross-jurisdictional claims" and "cross-jurisdictional liabilities". Hence, the "Numbers of foreign subsidiaries" indicator, which other supervisory authorities use in this context, should also be included.

The weighting within the "Complexity/Cross-Border" category should thus be adjusted to 25/6 % each.

Criterion "Interconnectedness"

The suggested indicators focus too much on interconnectedness within the banking sector. Financial relations with insurance companies or shadow banks do not register. Not only does this mask important contagion channels, it also provides a regulation-induced incentive for transactions with shadow banks rather than banks. In this respect, in compliance with the BCBS proposals regarding G-SIBs, the "Interbank liabilities" and "Interbank assets" indicators should be replaced with "Intra-financial system assets" and "Intra-financial system liabilities".

In accordance with the approach taken by other supervisory authorities we suggest adding the following indicator:

- "Volume of securities lending transactions"

The weighting within the "Interconnectedness" category should thus be adjusted to 25/6 % each.

Question 2
Do you agree that there may be Member States where small institutions are unlikely to pose systemic threats to the domestic economy? Do you think the option to exclude these institutions could reduce the administrative burden for institutions, or do you think there is a risk that the results of the analysis could be distorted by excluding them?

We agree with the idea that small institutions are unlikely to pose systemic threats to the domestic economy. Besides smaller amounts in total assets and rather simplified business models, these institutions are usually active in specific regions only, which excludes them from posing systemic threats to the domestic economy as a whole. Against this backdrop, it is appropriate to exclude such institutions and prevent them from additional administrative expenditure.

As smaller institutions typically tend to apply national GAAP, they do not necessarily apply FINREP on a regular basis. Thus the administrative burden for these institutions is indeed significant in comparisons with IFRS banks.

Although we appreciate the inclusion of an entry criterion, we do believe the current level set at 0.01 % of total assets per country is by no means sufficient to achieve the EBA's intention of reducing the

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administrative burden for small institutions. In countries with a highly granular banking sector, the proposed level would not lead to mentionable relief. In Germany for example, a level of 0.01 % would currently translate into an asset volume of merely about € 760 mn per institution. In order to exclude more institutions with very little to no potential to pose systemic threats, we strongly suggest increasing the entry criterion to 0.1 % of total assets per country.

Furthermore, a higher entry criterion should also benefit supervisory authorities by better enabling them to focus on the examination of potentially systemically important institutions.

Question 3
Can you think of any additional optional indicators that should be added to the list in Annex 2?

We basically agree with the idea of collecting the mandatory indicators on the basis of FINREP figures already available within a group, in order to minimise additional costs for the institutions. Annex 2 of the draft guidelines includes a list of 45 "optional indicators" which are to be assessed by designated authorities in the announced data collections for 2015 and 2016 (see page 12, no. 20). These indicators go far beyond the indicator set proposed for G-SIBs. Hence, we believe it is necessary that national and European designated authorities embark on a clarification and limitation of the "optional indicators" as early as possible, in order to simplify data collections. For some of the "optional indicators", it is not clear to us how and why they are to be collected for the assessment of systemic relevance or how they should be interpreted (e.g. "Potential contagion through shareholders"). Thus, we suggest that designated authorities exclusively use criteria already included in the Basel G-SIB data collection if and when defining optional indicators. This would avoid additional and unnecessary effort for data collections on the side of institutions. In addition, a clarification of the indicators is also urgently needed given the background of the foreseeable comprehensive disclosure requirements.

Furthermore, the provision of a catalogue of optional indicators from which individual indicators can be chosen at random to identify institutions with a score of less than 350 basis points is altogether unconstructive and suggests a non-existent objectivity. Should a competent authority be of the opinion that an institution scoring less than 350 basis points is systemically relevant then this opinion should be based on a qualitative supervisory decision. A catalogue of optional indicators is not required and may even by unnecessarily restrictive.

Yours sincerely,

on behalf of the German Banking Industry Committee
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by proxy

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