

## **A. Introduction**

Deutsche Börse Group welcomes the opportunity to comment on EBA’s Consultation Paper “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) (EBA/CP/2014/19)” issued on 18 July 2014.

DBG is operating in the area of financial markets along the complete chain of trading, clearing, settlement and custody for securities, derivatives and other financial instruments and as such mainly active with regulated Financial Market Infrastructure providers.

Among others, Clearstream Banking S.A., Luxembourg and Clearstream Banking AG, Frankfurt/Main, who act as (I)CSD<sup>1</sup> as well as Eurex Clearing AG as the leading European Central Counterparty (CCP), are classified as credit institutions and are therefore within the scope of the European Capital Requirements Directive (CRD) and Capital Requirements Regulation (CRR) which transpose i.a. the Basel III rules into European law. Clearstream subgroup is supervised on a consolidated level as a financial holding group. Regulated entities of DBG are regarded as systemically important Financial Market Infrastructures (FMI) and simultaneously classified systemically important credit institutions by its’ national supervisors. However none of them is classified as G-SII or as “significant institution” according to the SSM Regulation and final classification as O-SII under CRD IV so far has not been notified.

This paper consists of general comments (part B) and responses to the stated questions (part C).

## **B. General comments**

We agree to the drafted guidelines (of the EBA) as they are based on the international rules of the Basel Committee of Banking Supervision (BCBS).

In the Directive 2013/36/EU (in the following “CRD IV”) the EBA is entitled to publish guidelines on the criteria and indicators to identify O-SIIs. The EBA is setting a minimum mandatory framework of criteria and indicators which might be complemented by relevant authorities in order to honour the specificities of the domestic financial markets. In addition relevant authorities are entitled to

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lower or increase the threshold used to determine whether an institution is considered an O-SII.

We agree with flexibility in the prudential framework for institutions as the financial markets and systems are too complex for one-size-fits-all solutions, nevertheless the framework proposed might lead to regulatory arbitrage and harm the idea of a level playing field. With the wide range of additional indicators Member States are able to steer the result of the institutions’ assessment in a malfunctioning way in both directions.

### C. Responses to the questions for consultation

In the following we respond to question 1 to 3:

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.

We agree in principle with the set of criteria and indicators in Table 1 of Annex 1. Nevertheless following issues occurred to us:

- In general we miss a calibration of the chosen indicators. Without such calibration it is neither possible to perform a classification of credit institutions as O-SIIs nor for us at this stage to provide comprehensive feedback. Especially the weights between indicators and therefore the proper balance can only work with proper calibration. Without proper calibration one indicator may easily dominate another one due to higher absolute values.  
Example: A balance sheet (simplified) with total assets of 100, interbank assets of 50, other assets of 50, interbank liabilities of 50, debt securities outstanding of 10 and own funds of 40. Following a multiplication of these absolute values with the intended weights (8.33%) leads to the situation that the criteria “size” is always dominating the criteria “interconnectedness”;  
Result: As the chosen indicators are absolute rather than relative values the calibration is highly complex and possibly biased as well. Therefore we propose to use relative values instead;
- For the indicator “Value of domestic payment transactions” we see no reason why the indicator is only focused on domestic payments while

all other indicators are not isolated on domestic figures. The indicator “Value of domestic payment transactions” is defined in Table 2. We disagree with the definition as payments which are linked to transactions of financial instruments (financial instruments clearing, settlement, custody, new issuance and redemption payments) are not excluded.

- The criterion “importance” is reflecting on payments, deposits and loans only. A main driver of financial services is therefore not in scope which is financial instruments custody and settlement business. It could be considered to include an indicator, e.g. assets under custody for that criterion as well. However this is not a “typical banking activity” and even not a MiFID investment service or activity but only an ancillary MiFID service. Moreover such an indicator would especially capture financial market infrastructures which are also credit institutions and may unintentionally make them an OSII. We clearly ask to segregate capturing systemically importance of financial market infrastructures under dedicated financial market infrastructure rules from those capturing OSIIs under lending rules.
- Within the criteria set “Complexity/cross-border activity” the indicators “cross-jurisdictional liabilities” and “cross-jurisdictional claims” raise the question what is the domestic jurisdiction of a group active in several different countries and therefore what is the exact amount/share of the cross-jurisdictional business.

Further we consider following indicators included in Annex 2 as fitting for the set of mandatory indicators:

- Total EAD
- Total RWA
- Exposure measure of the Leverage Ratio
- Total EAD/Member State’s GDP
- Total Assets/Member State’s GDP
- Degree of resolvability
- Potential reputational contagion
- Inter-financial sector liabilities
- Inter-financial sector assets
- Duration of the fixed income portfolio
- Convexity of fixed income portfolio
- Degree of maturity transformation

We ask for clarification how the issue of weights between criteria shall be performed. In the current proposal relevant authorities are entitled to add

indicators and build new criterion sets. Therefore the question occurs whether all criteria set rank pari or whether additional criteria sets are represented to a lower degree in order to strengthen a more consistent approach in the different Member States.

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.

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

Please see our comments on question 1. No further proposals are made by us.

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We hope our comments are seen as a useful contribution to the discussion and final issuance on the respective guideline is reflecting our comments made.

Eschborn

17 October 2014

Jürgen Hillen

Matthias Oßmann

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