



EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Template for comments

Public consultation on the draft Guide on the supervisory approach to consolidation in the banking sector

Type of respondent

Banking association

Institution/company

German Banking Industry Committee

Contact person

Mr/Ms

First name

Surname

Email address

Telephone number

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General comments



We welcome the intention of the ECB to provide clarification and transparency on its supervisory approach to notifications of proposed acquisitions and applications for permission for a business combination

We want to note that consolidation via mergers and takeovers should be the result of market processes and managerial as well as /shareholders decisions. When the ECB talks about facilitating this process, this should not imply an active role or some kind of nudging hard incentives to take that path. In particular it must remain free from political influence (industrial policy approaches or the wish to create ("a "truly European Bank

The ECB has in the past stressed the need for consolidation in the European banking market and a more integrated European banking' market (Banking Union). But the sole focus on mergers and takeovers ignores the possibility of European cross-border banking activities .and national consolidation taking place without legal entities merging

Particularly through digital banking channels and attractive products and sustainable business models, financial institutions could achieve a greater market share and, if there were no barriers, customers and assets would have freedom of movement. In order to achieve a market structure with healthy banks serving their purpose for the economy two conditions must be met. An orderly market exit must be allowed, when entities lose their customers and assets and thus have no sustainable business model. And market entry for strong institutions with a sustainable business model should not face any unnecessary barriers. We would welcome an acknowledgement of .these points

In terms of content, we understand that section 3 is meant to give clear guidance on various topics observed in M&A cases, while sections' .and 4 outline rather procedural aspects 2 ,1

Given that there are currently regulatory processes established (which is also recognised in the guide, e.g. in §10 / start of application phase and §17 / governance), it is our understanding that the process described in the guide under consultation is meant to give additional .guidance on existing processes

We would like to name some other hindrances to cross-border consolidation, although they are not the primary focus of the current ECB' consultation process, e.g. differing tax regulations, inconsistent implementation of consumer protection/ data protection laws, and the lack ,of homogeneous management of cross border topics like KYC/AML due to national supervision. These hindrances need to be addressed .and we would welcome the ECB's support in this respect

Potential issues in connection with post merger MREL requirements and eligibility of MREL instruments, e.g. resulting from a change in' group structure, also need to be addressed. This should happen in close cooperation between ECB and SRB. Potential solutions could include the grandfathering of MREL instruments which would otherwise lose their eligibility under a new group structure, the granting of a transition period for the newly established institution to comply with MREL requirements, or the (temporary) implementation of a resolution strategy which facilitates the transformation process. Part of these solutions shall be to ensure predictability and legal certainty for the .banks when adapting the existing MREL decisions to the new situation

The guide under consultation, however, remains vague in some aspects (procedurally as well as content-related), which should be' .reviewed sometime (also in the context of the above remark)

Template for comments

Public consultation on the draft Guide on the supervisory approach to consolidation in the banking sector

Please enter all your feedback filling in the table below as following :

- Fill in the 5 green columns only: "Paragraph", "Type of comment", "Detailed comment", "Concise statement as to why your comment should be taken on board", "Proposal for adjusted wording";
- Respect drop-down menus. Do not alter the drop-down menus.
- Other columns, blue columns, are filled in automatically; do not alter them;
- Each comment shall deal with a single issue only; you can enter two comments for the same paragraph if you see several issues in the same paragraph; you can enter the same comment several times if it applies to several paragraphs;
- Indicate whether your comment is a proposed amendment, clarification, deletion or addition to the guide;
- Propose an alternative wording when appropriate.

Please do not make any changes to the structure of the template. Any feedback provided in a modified template will not be processed.

To ease the feedback process, please ensure you provide your feedback in an xls format only (i.e. not pdf)

Deadline: 1 October 2020

Id	Paragraph	Page	Section	Type of comment	Detailed comment	Concise statement as to why your comment should be taken on board	Proposal for adjusted wording	Type of respondent	Institution/company	Name of commenter	Personal data
1	1	1	Introduction	Clarification	Lines 8 and 14; instead of "restructuring" rather "realignment" or "reorganisation", as restructuring may be a too narrowly understood term.	cf. "Detailed comment"		Banking association	German Banking Industry Committee	,	Don't publish
2	8	3	1.2.1. Early communication	Clarification	We understand that the processes outlined in the guide follow the rules in Art. 22 CRD as implemented by the national legislators.	cf. "Detailed comment"		Banking association	German Banking Industry Committee	,	Don't publish
3	8	3	1.2.1. Early communication	Clarification	It should be made clear that the ECB will look at the insider issue and take into account its requirement in the context of early communication.	cf. "Detailed comment"		Banking association	German Banking Industry Committee	,	Don't publish
4	9	3	1.2.1. Early communication	Addition	Timeline when to get feedback that information presented is sufficient and/or to receive the preliminary feedback. For example, a provision could be made for the ECB to give its preliminary feedback without undue delay.	cf. "Detailed comment"		Banking association	German Banking Industry Committee	,	Don't publish
5	9	3	1.2.1. Early communication	Clarification	With respect to the detail of the integration plan, we kindly ask for acknowledgement that in M&A projects the level of detail is usually quite limited and not yet very granular in the presumably early transaction stage in which the initial communication takes place.	cf. "Detailed comment"		Banking association	German Banking Industry Committee	,	Don't publish
6	11	4	1.2.2. Application phase	Clarification	We understand that the processes outlined in the guide follow the rules in Art. 22 CRD as implemented by the national legislators.	cf. "Detailed comment"		Banking association	German Banking Industry Committee	,	Don't publish
7	15	5	2.1. Sustainability of the business model	Clarification	§15 (d): Shall this also apply to mergers/acquisitions under stressed conditions, where, for example, one or both companies do not meet the requirements on a standalone basis prior to the transaction?	cf. "Detailed comment"		Banking association	German Banking Industry Committee	,	Don't publish
8	20	7	2.2. Governance and risk management framework	Clarification	Does that imply that the banks involved should actively incentivise individuals involved in the business combination, or rather that if such incentivisation was established, it should follow the principles described here? It should be acknowledged that general/ other compensation schemes for the parties involved must be considered.	cf. "Detailed comment"		Banking association	German Banking Industry Committee	,	Don't publish
9	27	8	3.2. Pillar 2 capital requirements and Pillar 2 guidance	Clarification	Is the weighted average of the P2R and P2G levels conservatively calculated on a RWA basis?	It is essential for a merger that future combined capital requirements can be estimated. We therefore deem it necessary that supervisors give an indication or at least a range of potential P2R and P2G levels including adjustments shortly after information from the competent authorities.		Banking association	German Banking Industry Committee	,	Don't publish

10	28	8	3.2. Pillar 2 capital requirements and Pillar 2 guidance	Clarification	Regarding the statement "capital requirements and guidance should be clarified during the application phase..." it seems important to us that such clarity is actually provided, as in most cases this will be one of the major prerequisites for going ahead with the project.	cf. "Detailed comment"		Banking association	German Banking Industry Committee	,	Don't publish
11	29	9	3.2. Pillar 2 capital requirements and Pillar 2 guidance	Clarification	Unclear what the impact of the coordination efforts of ECB with relevant authorities will have on the timeline/ overall process. Are these bodies not involved under current policies and procedures anyway? What is new here?	cf. "Detailed comment"		Banking association	German Banking Industry Committee	,	Don't publish
12	32	9	3.3. Badwill	Clarification	How shall the non-distribution of badwill profits to shareholders in the year(s) after a transaction be monitored and/ or prohibited? Does that imply specific reporting duties towards the ECB?	cf. "Detailed comment"		Banking association	German Banking Industry Committee	,	Don't publish
13	32	9	3.3. Badwill	Clarification	For the calculation of badwill (goodwill), all assets acquired and all liabilities assumed in a business combination are measured at acquisition-date fair value. It should be clarified that this one-time fair value application does not fall under the prudential filter regulation with regard to own credit spread.	cf. "Detailed comment"		Banking association	German Banking Industry Committee	,	Don't publish
14	New paragraph	0	0	Addition	In the event of a business combination, large credit exposure limits could be exceeded. For a limited period of time (to be specified) such an excess must not become an obstacle or lead to any deductions from regulatory own funds. It should be temporarily tolerated to avoid an unnecessary supervisory burden. Therefore, a specific passage should be included in this guidance.	cf. "Detailed comment"		Banking association	German Banking Industry Committee	,	Don't publish
15	36	10	3.4. Internal models	Clarification	It should be clarified that internal models refers to all risk types, in particular credit, market and operational risk.	cf. "Detailed comment"		Banking association	German Banking Industry Committee	,	Don't publish
16	36	10	3.4. Internal models	Clarification	Where business combinations or partial business sales are expected to reduce operational risk, RWA in the AMA, supervisors shall process the necessary approvals swiftly (e.g. exclusion of loss data) and in the meantime accommodate pragmatic approaches.	cf. "Detailed comment"		Banking association	German Banking Industry Committee	,	Don't publish
17	36	10	3.4. Internal models	Clarification	We would appreciate a clearer definition/ guidance on "limited period of time" regarding usage of internal models. Could you be more specific regarding the time frame under which internal models may be used?	cf. "Detailed comment"		Banking association	German Banking Industry Committee	,	Don't publish
18	New paragraph	0	0	Addition	In case of a merger of major banks the use of waivers could be essential for the acquirer. Therefore, a passage in particular with respect to waiver rules would be welcome (e.g. using of granted waivers during an appropriate transition period).	cf. "Detailed comment"		Banking association	German Banking Industry Committee	,	Don't publish
19	37	10	4.1. Enhanced monitoring of execution risks	Clarification	We kindly ask acknowledgement that in complex transactions deviations from planned timelines are not unusual. Hence, when would you regard these as undue deviations?	cf. "Detailed comment"		Banking association	German Banking Industry Committee	,	Don't publish
20	38	10	4.1. Enhanced monitoring of execution risks	Clarification	How shall the specific reporting requirements be implemented vis-à-vis the ECB or the relevant NCAs? Will the reporting be part of regular reporting?	cf. "Detailed comment"		Banking association	German Banking Industry Committee	,	Don't publish

21	45	12	5. Application of supervisory approach to business consolidation transactions involving LSIs	Amendment	<p>The ECB Guide must not be applied to LSIs – not today and not in the future. Unfortunately, the Draft Guide contains some ambiguous language on this point: § 45 states that "The SSM supervisory approach to consolidation also covers LSIs (...)". This could suggest that the Guide will be applied to LSIs too, although this does not seem to be the intention. Footnote 35 on the other hand explains very clearly the ECB's approach to LSIs: "The vast majority of business combinations involving LSIs do not require a qualify-ing holding procedure given that they take place within the cooperative and savings banks sectors, usually at a local level, and do not result in a parent-subsi-dary structure, but in a single institution, and as no qualifying holding threshold is met. They would thus not fall within the scope of the proposed framework." In order to avoid any misunderstandings regarding the (non-)application of the Guide to LSIs, footnote 35 should be integrated into the wording of § 45.</p>	Otherwise the Guide contains contradictory statements.		Banking association	German Banking Industry Committee		Don't publish
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