



BANKING STAKEHOLDER GROUP

CONSULTATION ON EBA/CP/2015/17 ON
“DRAFT GUIDELINES ON COMMUNICATION BETWEEN COMPETENT
AUTHORITIES SUPERVISING CREDIT INSTITUTIONS AND
STATUTORY AUDITOR(S) AND AUDIT FIRM(S) CARRYING OUT THE
STATUTORY AUDITS OF CREDIT INSTITUTIONS”

General Comments and Replies to Questions

BY THE EBA BANKING STAKEHOLDER GROUP

London, January 21st, 2016

Foreword

The EBA Banking Stakeholder Group (BSG) welcomes the opportunity to comment on the Consultation Paper 2015/17 on Draft Guidelines on communication between competent authorities supervising credit institutions and their statutory auditors.

This response has been prepared on the basis of comments circulated and shared among the BSG members.

This response outlines some general comments by the BSG, as well as our answers to the questions indicated in the Consultation Paper.

General comments

The BSG welcomes the opportunity to comment on the Draft Guidelines on communication between competent authorities supervising credit institutions and their statutory auditors, because the cooperation between banks' control mechanisms by an effective communication and sharing of relevant information about specific risks affecting each credit institution will result in both:

- a more relevant and accurate information to users of audit reports to financial statements (Basel Pillar III), and
- a more timeliness and verified information for supervisory purposes (Basel Pillar II).

Furthermore, the existence of a regular and effective channel of communication might facilitate the accomplishment of the “duty of report” by statutory auditors, as settled in the Capital Requirements Directive and the Audit Regulation for the statutory audit of Public Interest Entities.

The additional cost of audits that this communication could imply, in this context, must be viewed as the minimum sacrifice to pay for the sharing of common information about the state and evolution of risks affecting credit institutions. The performance of the competent authorities in the case of trouble needs to be based on its own information as well as other information from third parties, and statutory auditors are the only one of these parties authorized to examine the internal information generated by the bank.

On the other hand, practices vary across Member States and it is desirable to harmonize practices across Member States, especially in the case of G-SIIs and O-SIIs. In the case of these Institutions, the European Central Bank has the supervisory responsibility and it has the need to follow the same rules in its dealings with the entities supervised.

The BSG supports one of the main messages in the Guidelines about the responsibilities of competent authorities and banks: the communication envisaged in these Guidelines should not undermine their respective responsibilities, because it is designed mainly to reinforce the effectiveness of their complementary missions. In any case the sharing of information is not a substitute for the due process of supervision by competent authorities or the exercise of appropriate skepticism and due diligence by auditors.

Replies to Questions

1. Is the scope of application of the guidelines appropriate and sufficiently clear?

The scope is sufficiently clear. **Perhaps it could be useful to mention the case of auditors of subsidiaries that are different from the group statutory auditor.** In that case both auditors act in coordination and therefore they must receive and send information jointly about the specific individual entity. This implies that both auditors need to be considered by competent authorities as the same auditor for the purposes of the Guidelines (this is also the case when the statutory audit is performed jointly by two auditors).

2. As currently foreseen, the application date will be in the last quarter of 2016. Is the date of application of the guidelines appropriate?

If the Guidelines are promulgated by the middle of 2016, there is sufficient time to prepare the schedule of actions relating to the 2016 audit, because the last quarter of the financial year is when the audit work usually begins. **The BSG encourages the EBA to approve and deliver these Guidelines as soon as possible.**

3. Is the general framework of the communication between competent authorities and auditors appropriate and sufficiently clear? Please indicate any additional elements to be included.

The framework makes a distinction between communication (let's say, standard level for non-systemically significant credit institutions) and in-depth communication (for G-SIIs, O-SIIs and other determined troubled institutions). Although the strategy for in-depth communications is relatively well defined through the Guidelines, the main actions to be taken regarding non-systemically institutions are left to the discretion of the competent authorities.

4. Please provide any comments you may have on the appropriateness of the proposed proportionality approach.

Comments regarding the proportionality principle are mentioned in the rest of the comments.

5. Are the guidelines on the scope of information to be shared during the communication appropriate and sufficiently clear? Are the issues on which information may be shared in Annex I appropriate and sufficiently clear? Please indicate any additional issues to be included.

The BSG broadly agrees with the scope of the information to be shared. Nevertheless:

- a) In paragraph 28, the list of issues prepared by the competent authorities should be considered alongside issues **suggested by both the authorities and the auditors** (the wording seems to suggest that the list is only for problems detected by the competent authority);
- b) In “Principle 2”, **the authorities must be committed to share with auditors the main problems and findings detected** in the supervision process of credit institutions as well as auditors being requested to share their main findings with the authorities;
- c) In paragraphs 30.b and 33.c **there should be a reference made to the issues included in article 20 (corporate governance statement)** of the Accounting Directive 2013/34/EU and especially to the “internal control and risk management systems in relation to the financial reporting process”, that have to be assessed by auditors.

Other than that, BSG suggest no additional issues to be included in Annex I.

6. Are the guidelines on the form of communication appropriate and sufficiently clear? Please indicate whether any particular form of communication should be used and under which circumstances it should be used.

The guidelines are clear, but it seems as if the Guidelines see that the physical meetings are reserved only for complex matters and situations. For most credit institutions, and not only to in-depth communication cases, the most effective way to communicate issues is through a physical meeting. **The BSG prefers that the Guidelines’ wording focuses mainly on physical meetings** that, in some particular cases, could be replaced or complemented by written communications.

7. Are the guidelines on the participants in the communication between competent authorities and auditors appropriate and sufficiently clear? Are there any other participants that should be considered participating? Under which circumstances should other participants be considered?

The BSG agrees with the participants. However, in the case of trilateral communications or meetings, **the audit committee should be considered a third**

party distinct from the management of the institution, according to its function of responsibility for the supervision of internal controls and its particular relationship with auditors. This means that the audit committee needs to be informed or convened to physical meetings apart from the rest of the credit institution's management.

In any case, the audit committee needs to have full access to the information containing the communications performed, as listed in paragraph 43.

8. Are the guidelines on the frequency and timing of communication appropriate and sufficiently clear? Please provide information on any additional circumstances which may necessitate a different frequency and timing of communication.

In the case of auditors, the information received in the communication process is used to revise the planning of audits. For this reason the more effective communication is the earliest one. There is no reason to delay the first communication, that should take place when the auditor is planning its work or, at least, in the first stages of the audit development. This is the proper time for the competent authority to share its information and concerns with the auditor.

On the other hand, the auditor is ready to share the findings and issues of the audit with the competent authority in the final stages of the audit, and preferably before signing the audit report.

In conclusion, apart from the possibility of dealing with emergent issues in additional communications or meetings (as it is said in paragraph 47), **the BSG believes that at least two communications are needed**, the first one being at the beginning of the audit process and the last one at the concluding phase of the audit.

The BSG agrees with a bilateral meeting in the case of in-depth communication set in paragraph 48.

9. Are the guidelines on the communication between competent authorities and auditors collectively appropriate and sufficiently clear? Please indicate any additional element which should be included in the guidelines regarding the communication of competent authorities and the auditors collectively.

The BSG agrees and suggests the inclusion to the list of issues in Annex I of the following:

- Main concerns of the competent authority regarding the risks of credit institutions, according to the results of the supervisory activity.
- Orientation and guidance on the treatment of new issues and problems.

- Problems encountered in past audits (or communication processes with auditors) and possible solutions.

10. Do you agree with the impact assessment and its conclusions, having regard to the baseline scenario used for this impact assessment? Please provide any additional information regarding the costs and benefits from the application of these guidelines.

The main benefits of the communication envisaged in the Guidelines derives from the cooperation between competent authorities and statutory auditors and provide more information to both parties via effective dialogue in order to control the banking activity and, by adding all the information shared, facilitates the control of the evolution of the stability of the financial system.

The financial and capital markets would take advantage of the financial reporting assured by this type of cooperation in terms of a more solid knowledge of the entity's position and performance.

11. Please provide any additional comments on the draft guidelines.

As indicated in the General Comments (above), the considerations of additional costs are negligible in this case, because the **benefits from the communication between authorities and banks are much more material than the relatively low costs** of having additional communication or meetings.

Submitted on behalf of the EBA Banking Stakeholder Group

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