
Draft Guidelines on ancillary services undertakings (ASU) specifying the criteria for the identification of activities referred to in Article 4(1)(18) of Regulation (EU) No 575/2013

Public hearing
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Contents

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- 1 Background and rationale
 - 2 Direct extension of banking under point (a) of Article 4(1)(18) of Regulation (EU) No 575/2013
 - 3 Ancillary to banking under point (b) of Article 4(1)(18) of Regulation (EU) No 575/2013
 - 4 Other activities considered similar by the EBA to points (a) and (b)
 - 5 Principal activity of an ancillary services undertaking
 - 6 Next steps
 - 7 Overview of questions for consultation
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- In accordance with the mandate provided by Article 4(5) of Regulation (EU) No 575/2013 (CRR), the draft guidelines (GLs) aim at providing **clear, simple and consistent criteria** for the identification of activities that are performed by ancillary services undertakings, as per Article 4(1)(18) of the CRR, **harmonising practices** across Member States. In this regard, the GLs provide:
 - The **criteria**, complemented by a **list of activities**, to determine whether an undertaking performs activities that qualify as a **‘direct extension of banking’**;
 - The **criteria** to determine when the principal activity of an undertaking **supports, complements or relies on banking** in a way that should be considered as **‘ancillary to banking’**;
 - The **process** that should be followed, on a **case-by-case basis** to determine which activities should be considered by the EBA **similar to those referred to in points (a) and (b)** of Article 4(1)(18) of the CRR.
- In addition, the guidelines specify that an undertaking should be considered as performing activities referred to in points (a), (b) or (c) of Article 4(1)(18) of the CRR as its **principal activity** on the basis of **certain thresholds being triggered**.

General provisions

Undertakings that should **not be regarded as ASU**:

- ⊗ those explicitly **excluded** from the **financial institution definition** under point (26) of Article 4(1)(18) of Regulation (EU) No 575/2013; or
- ⊗ those that already **fall within** the definition of **institution, financial institution** or **financial sector entity under** points (3), (26) and (27) of Article 4(1) of Regulation (EU) No 575/2013, for any reason other than being an ASU.

ASUs that are **included** in the scope of **consolidation** of an institution should be **regarded as ASU** for **any other undertaking**.



Question for consultation

Q1. Do you have any comments on the general provisions set out in Section 4.1?

A. Direct extension of banking

Activities to be considered a **direct extension of banking** under Article 4(1)(18)(a) of Regulation (EU) No 575/2013

Activities that are **fundamental** to the value chain **of core banking services** ⁽¹⁾

- Brokerage of loans/deposits, loan servicing
- Credit worthiness assessment of individual clients of institution/financial institution
- Debt recovery, valuation of collateral
- Management of risks stemming from core banking services
- Acquisition, ownership, management and liquidation of repossessed assets for the interest of an institution or financial institution



Services and activities that involve **maturity** or **liquidity** transformation, **leverage** or **credit risk transfer**

- When provided by undertakings that would qualify as shadow banking entities for the purposes of Article 394(2) of Regulation (EU) 575/2013.



Other activities that are **related to lending**

- Crowdfunding services within the meaning of Article 2(1)(a) of Regulation (EU) 2020/1503;
- Peer-to-peer lending and marketplace lending.

A. Direct extension of banking



Questions for consultation

Q2. Do you agree with the criteria specified for identifying an activity as a ‘direct extension of banking’? Do you believe that other criteria should be included to identify activities that should fall under this definition? If yes, please provide detailed proposals.

Q3. Do you have any comments on the use of activities that are fundamental to the value chain of core banking services as a criterion for identifying activities that are a ‘direct extension of banking’? In particular, do you find the definition of and link to core banking services, and the related list of activities sufficiently clear?

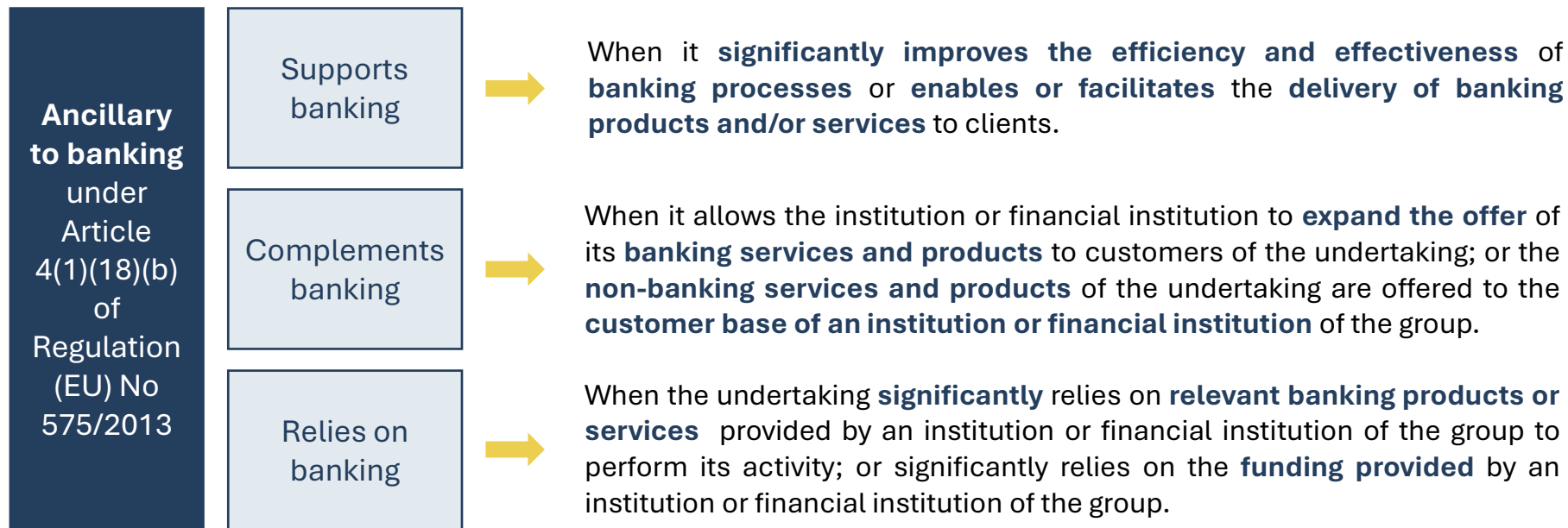
Q4. Do you consider appropriate the inclusion of services and activities that involve maturity transformation, liquidity transformation, leverage or credit risk transfer – when conducted by shadow banking entities – as one of the criteria for identifying activities that are a ‘direct extension of banking’?

Q5. Do you consider appropriate the inclusion of ‘other activities related to lending’ as one of the criteria to identify activities that are a ‘direct extension of banking’? Do you consider undertakings that perform one of these activities as their principal activity already qualifying as financial institutions within the meaning of Article 4(1)(26) of Regulation (EU) No 575/2013?

B. Ancillary to banking

- ★ An activity should be identified as ancillary to banking when, taking into account the **relevance of the link or connection** of the activity to banking, it either: **supports, complements** or **relies on banking** (kindly refer to next slide).
- The term '**banking**' refers to the **provision of any service or activity** listed in Annex I, points 1 to 12 and points 15, 16 and 17 of Directive 2013/36/EU and in Annex I, Section A or B to Directive 2014/65/EU in relation to the financial instruments listed in Annex I, Section C to Directive 2014/65/EU , by an **institution or financial institution**.
- The **assessment** should be **limited to** the activities performed by the following undertakings:
 - a. undertakings that, when **considered ASU**, have to or may be **included in the prudential perimeter of consolidation** of the institution in accordance with Articles 11 and 18 of Regulation (EU) No 575/2013; or
 - b. undertakings in which a **direct or indirect participation or other capital ties are held**, and that are **collectively owned together with other institutions** that are members of an **institutional protection scheme** as referred to in Article 113(7) of Regulation (EU) No 575/2013.

B. Ancillary to banking – general criteria



B. Ancillary to banking – activities listed in point (b)

Operational leasing

“A leasing contract that does not substantially transfer all the risks and rewards incidental to ownership of the leased asset”

- The leasing of assets is **provided** to **institutions or financial institutions** – whether inside or outside of the group;
- The leasing of assets is **complemented** by the **offer and sale of banking products** or services to the lessee through an institution or financial institution of the group; or
- The leasing of assets **relies on banking**, including significant reliance on the group’s funding.

Ownership or management of property

- The activity **supports** banking, including where: the properties owned or managed are used to support banking operations; or the ownership arises as a direct result of banking business;
- The activity **complements** banking, evidenced by objective cross-selling strategies; or
- The activity **relies** on banking, including when the properties owned or developed by the undertaking rely significantly on the group’s financing.

Provision of data processing services

- The activity **supports** banking, ensuring that banking operations are carried out effectively.
- The activity **complements** banking, for instance, by enhancing, adding value to, or complementing banking products or services.
- The activity **relies substantially** on banking, for instance, where the data processing services rely on data provided by or linked to the banking activities.

B. Ancillary to banking



Questions for consultation

Q6. Do you agree with the proposed criteria for identifying activities that are ‘ancillary to banking’? Are the three main criteria specified for that purpose (i.e. support, complement and rely on banking) sufficiently clear? Are there any other criteria that should be included in that regard?

Q7. Do you agree with the approach envisaged in Section 4.3, which limits the assessment of an activity as ‘ancillary to banking’ only to undertakings that may have to be included in the scope of prudential consolidation or are collectively held by institutions belonging to the same IPS?

Q8. Do you have any comments on concept of ‘banking’ specified in Section 4.3, which includes all relevant services or activities provided by institutions or financial institutions?

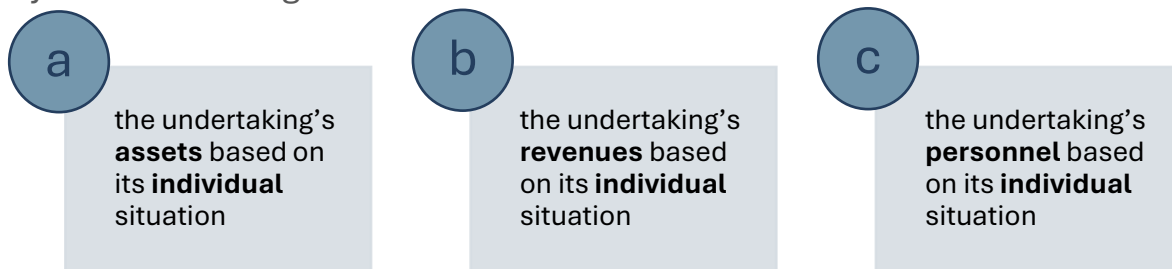
Q9. Do you have any comments on the specifications provided for the activities explicitly referred to in Article 4(1)(18)(b) of Regulation (EU) No 575/2013? In particular, are the illustrative examples provided therein adequately defined?

C. Activities similar to points (a) and (b)

- The GLs specify the process for the purpose of application of Article 4(1)(18)(c) of Regulation (EU) No 575/2013. The approach followed is intended to ensure that the GLs **remain responsive to emerging sources of risks**, including those stemming from activities that do not fully meet the conditions for being classified as a direct extension of banking or ancillary to banking.
- In that regard, **competent authorities** should **notify the EBA** of an activity that can be deemed similar to those referred to under point (a) and (b), **identifying** the **relevant undertaking** performing the activity and **explaining why** its activity should be seen as similar also in accordance with the GLs.
- The EBA should apply the GLs to determine whether the activity notified is similar to the activities referred to in Article 4(1)(18), points (a) and (b) of Regulation No 575/2013.

Principal activity of an ASU

- An undertaking should be regarded as performing activities referred to in points (a), (b) or (c) of Article 4(1)(18) of Regulation (EU) No 575/2013 as principal activity, where the **total of these activities** covers **at least 50%** of any of the following indicators:



- An activity should be regarded as an undertaking's principal activity even if **none** of these thresholds **is met**, where this can be established on a **case-by-case basis** to the **satisfaction of the competent authority**.

C. Similar activity and principal activity of an ASU

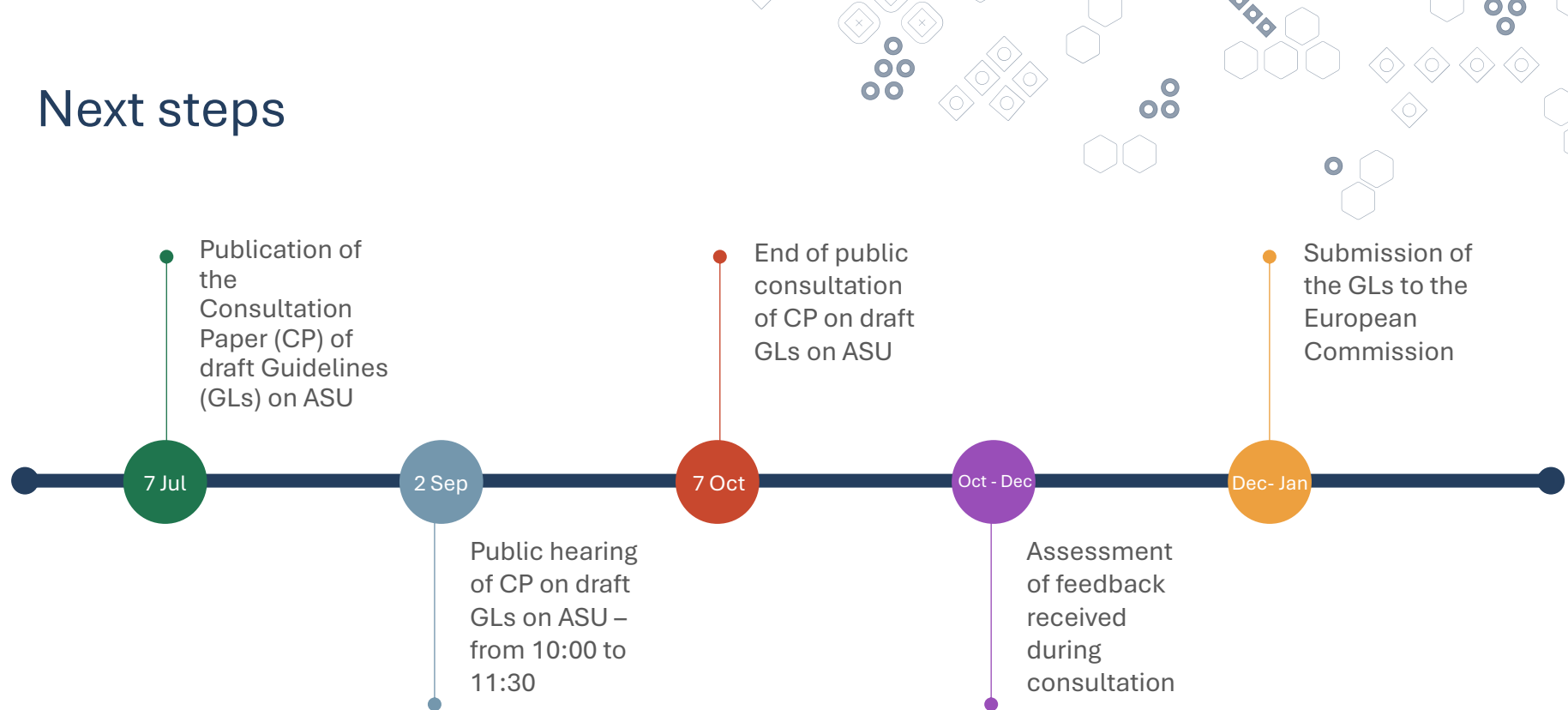


Questions for consultation

Q10. Do you have any comments on the process envisaged for the determination of activities to be considered similar to points (a) and (b) under Article 4(1)(18)(c) of Regulation (EU) No 575/2013?

Q11. Do you have any comments on the clarification of the principal activity of an ASU? Do you consider the definition of this concept useful for the application of Article 4(1)(18) of Regulation (EU) No 575/2013?

Next steps





Thank you!



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