European Banking Authority

Via Consultation Page

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Appendices

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DK reference: …

BVR reference: …

**Comment from the German Banking Industry Committee on the Consultation Paper concerning the draft guidelines on materiality, proprietary and confidentiality and on disclosure frequency under Articles 432(1), 432(2) and 433 of Regulation (EU) 575/2013.**

Dear Sir/Madam,

First of all, we would like to express our thanks for giving us the opportunity to comment on the Consultation Paper indicated above. We welcome this opportunity and would like to make the following statements on the paper:

**General Statements**

The Basel Committee for Banking Supervision currently undertakes a thorough review of disclosure requirements. We have no intention to anticipate the outcomes of the ongoing consultations, but we would like to suggest that the European Banking Authority (EBA) should always take developments taking place on an international level into account, in order to avoid unnecessary duplication of efforts for institutions implementing revised regulations.

We welcome more practical concepts regarding materiality, confidentiality and proprietary, and agree with the necessity to employ different assessment criteria for accounting and prudential purposes. Both accounting and prudential regulations are expected to deliver information relevant for the decision-making process. EBA explains this in its guideline; however, considering the wealth of information to be disclosed, one aspect that is missing is any indication as to how EBA will ensure that the concepts laid out in the accounting and prudential regulations will not deviate going forward. In order to avoid such a scenario, we kindly ask EBA to take this concern into consideration for the remaining draft process of the concept, and would like to remind EBA of the background of the different supervisory bodies involved (ESMA and NCAs).

**Special Statements**

Q1) Do you agree that the use of disclosure waivers and the assessment of the need for more frequent disclosures should be framed – for the purposes of Article 431 CRR – within a dedicated process? If not, please state why.

In general, we believe that qualitative requirements are appropriate, taking into consideration the level playing field in the EU. However, from our point of view, the principle of proportionality should be emphasised more strongly. Hence, we believe that the proposed formal requirements for institutions not using disclosure waivers or not subject to more frequent disclosures are clearly too strict. Procedural and documentation requirements (according to sections 8 to 10 of the Consultation Paper) should be kept on a low level for small and medium-sized institutions with less complex business activities, where (i) annual disclosure of the information required by the CRR is sufficient in order to convey their risk profile comprehensively to market participants and (ii) that do not use (or hardly ever use) disclosure waivers.

Q2) Do you agree with the features of this process? If not, which one(s) would you exclude/include?

Fortunately, the definitions used in the guidelines are generally worded in largely abstract terms, which allows institutions to make use of the discretion provided for in the CRR. However, the process and documentation requirements, particularly with regard to the use of disclosure waivers for materiality, confidentiality or proprietary reasons, are very comprehensive:

**Section 8**

From the perspective of the banking sector, waiver and frequency policies are too comprehensive and provide for far too many details. For instance, section 8d of the Consultation Paper requires a full list of all qualitative and quantitative information items to be disclosed, as well as updates at least annually. The advantage of simply reflecting legal requirements is not clear to us in this context.

According to section 8g, the management body shall be informed regularly regarding implementation of the policies. We believe that an event-driven reporting would be appropriate, if necessary at all. From our perspective, it would be sufficient to inform the management body about any unchanged policies when it approves the publication of the disclosure report. Only if the policies are subject to significant changes would the informing and approval of the management body be required.

Requirements according to section 8h are redundant and should be deleted, since it is unnecessary to establish in a policy any review on a regular basis by internal audit or other comparable control units. In fact, internal audit should only carry out reviews of entire subject areas (such as disclosure). Reviews should always be carried out by internal audit, depending on its own risk analysis. In addition, we assume that the subject area of disclosure, including related processes and documents, has always been part of internal audit reviews.

Besides, the fulfilment of disclosure requirements is reviewed by external auditors on a regular basis (usually once a year). This includes, *inter alia*, an assessment of the disclosure procedures and processes in place. In this way, waiver and frequency policies are covered as well.

**Section 10**

Reference to Article 434 is not conceivable in this context. This Article only clarifies the means of disclosures, but does not contain any explicit disclosure requirement. We kindly ask for amendment, of clarification of this reference.

Q6) Do you agree with the indicators in paragraphs 18 that should lead institutions to assess their need to disclose information more frequently? If not, which alternative indicators would you suggest?

The explanations on disclosure frequency, especially the indicators included in the paper, could de facto lead to a higher compulsory disclosure frequency. The explanations are formulated openly and only require an assessment regarding a more frequent disclosure if one of the indicators are met, but in fact a higher disclosure frequency will be expected from institutions fulfilling one of the indicators.

According to Article 433 of the CRR, annual disclosures shall be published in conjunction with the date of publication of the financial statements. This brings us to the assumption that the disclosure of information required in section 23 is not supposed to be published simultaneously with (interim) reports. In many cases, such information can only be generated after publication of the relevant financial data (for example, in the case of reconciliation accounts). Would you please clarify whether the date of disclosure may deviate from the respective financial reporting date. We consider a lead time of four weeks from the reporting date as appropriate.

Moreover, we believe that the quantitative criteria stated in section 18 of the Consultation Paper (institutions have to assess their need to publish information more frequently than annually, provided that at least one of the indicators applies to them) are inconsistent. In particular, throughout Europe it will not be possible to equally implement all quantitative criteria relating to the financial statements. For instance, section 18b claims that if an institution’s consolidated total assets are in excess of EUR 30 billion, the entity has to assess the need to publish information more frequently than annually. Section 18c also refers to a total assets threshold: publication within the financial year has to be assessed if the institution’s four-year average of total assets is in excess of 20% of the four-year average of its home Member State’s GDP. Besides the fact that taking total assets into consideration twice as a threshold basis does not appear to to be reasonable, we believe the use of total capital as an additional criteria in the context of disclosure would be appropriate. However, total capital is not mentioned in section 18 at all. Against this background, we propose including a minimum regulatory capital threshold of EUR 10 billion as a criterion pursuant to section 18b.

What seems to be problematic to us is the fact that EBA provides advice on the disclosure frequency, emphasising at the same time that the frequencies provided should be considered minimum requirements. This might give rise to even stricter regulation, for instance on the part of NCAs – from our perspective, this would be a contradiction to the target of a common implementation of disclosure regulations across Europe.

Q8) Do you agree that information listed in paragraph 19 should be provided in case disclosures are omitted due to immateriality reasons? If not, why? Do you agree that the provision of this information allows for an optimal degree of transparency regarding the use of the materiality waiver? If not, what additional information should be provided?

The requirements in section 19c of the draft EBA Guidelines go far beyond the specifications provided in the CRR, we believe. Art. 432 (3) of the CRR provides that the institution concerned shall state the reason for non-disclosure, and publish more general information only for items of information classified as proprietary or confidential. For items of information not disclosed due to non-materiality, CRR does not provide that the reason for non-disclosure or more general information shall be stated. Hence, the provision of section 19c of the EBA Guideline, according to which more general or aggregate information, (including – if relevant – quantitative information on the non-disclosed separate items of information) shall be disclosed, is not in line with the CRR. We kindly ask to delete this provision from the document.

Q12: Do you agree with the proposed implementation date? If not, which alternative date would you suggest?

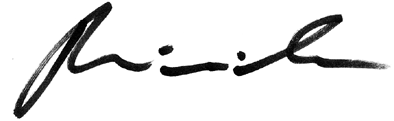
The proposed first-time application date of 1 January 2015 is too early. Even if the consultation process might be accomplished by the proposed date, the new regulations need to be taken over by the NCAs, which will require an appropriate time frame. In addition, the institutions should also be granted an adequate timeframe for preparation, in particular for the implementation of the new disclosure requirements. Against the background of the comprehensive implications resulting from the BCBS's review of the disclosure requirements, we believe that a harmonisation of such requirements is necessary. Hence, we recommend postponing the implementation date to 1 April 2016.

Yours sincerely,

on behalf of the German Banking Industry Committee

National Association of German Cooperative Banks





Gerhard Hofmann Thorsten Reinicke