Response of Deutsche Börse Group

to the

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

Eschborn, 07 October 2025

Introduction

Deutsche Börse Group (DBG) welcomes the opportunity to comment on the EBA Consultation Paper on Draft Guidelines on Ancillary Services Undertakings (ASUs), specifying the criteria for the identification of activities referred to in Article 4(1)(18) of Regulation (EU) No 575/2013.

DBG's responses to questions for consultation

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

   We consider the approach outlined in Section 4.1 to be reasonable.

2. **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.**

   We agree that activities fundamental to the value chain of core banking services (namely deposit taking, lending and guarantee business) should be considered as a direct extension of banking.

   However, we do not support the reference to "activities that involve maturity transformation, liquidity transformation, leverage or credit risk transformation" as outlined in paragraph 13(b). Liquidity or maturity transformation occurs every time the liquidity respectively maturity of funds taken / incoming flows does not perfectly correspond to the liquidity / maturity of funds provided / outgoing flows. Similarly, leverage describes the relative size of an entity's assets to its own funds, which per se does not necessarily indicate the provision of banking services. Maturity or liquidity transformation as well as leverage should not be considered a direct extension of banking per se, only when resulting from or directly relating to the provision of core banking services.

   We therefore encourage EBA to further specify paragraph 13(b) accordingly. The missing link of "maturity transformation", "liquidity transformation" and "leverage" to core banking services might otherwise create uncertainties leading to diverging interpretation, unintended application of requirements and therefore also inconsistent implementation. In this context, EBA might want to consider limiting paragraph 13(b) to maturity or liquidity transformation and leverage resulting from or relating to core banking services as defined in paragraph 13(a).

3. **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?**

   We support the definition of core banking services through referring to CRD services as proposed and also believe that the services listed in paragraph 14 are adequate and clear. However, we would assume that the recipients of these services are necessarily institutions (in contrast to financial institutions) since only institutions can carry out the core banking services that these services are supposed to support. We would hence suggest to delete the references to financial institutions in paragraph 14 throughout.

4. **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'?**

   We do not consider that services and activities involving maturity transformation, liquidity transformation or leverage should qualify as a direct extension of banking (see our answer to question

2 above). Specifically, the reference to entities that "would" qualify as shadow banking entities does not offer further clarity beyond those activities already mentioned and introduces unnecessary complexity: Art. 4(155) CRR defines 'shadow banking entity' as an entity that carries out banking activities outside the regulated framework. In Art. 2 RTS 2023/2779, services involving maturity/liquidity transformation etc. are defined as a subset of "banking activities" for the purposes of the CRR definition, however without introducing further specifications. The reference to "shadow banking entities" may also create a circular contradiction since Art. 1(2)(e) RTS 2023/2779 excludes entities from this definition that are "included in the supervision of an institution on a consolidated basis".

5. **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?**

   The term "other activities related to lending" does in our view not provide practical guidance to determine activities that are a "direct extension of banking".

   In particular, entities carrying out the activities referred to in paragraph 15(a) and (b) (crowdfunding services, peer-to-peer lending/ marketplace lending) may, depending on the particulars of their business model, often already qualify as financial institutions within the meaning of the CRR.

   Other entities may not qualify as financial institutions, for instance if they provide non-licensable loan brokerage services (in contrast to lending within the meaning of Annex I point 2 CRD). However, we would note that such non-licensable loan brokerage services are already addressed in paragraph 14(a) as an activity fundamental to the value chain of core banking services.

   Accordingly, we do not consider that crowdfunding services or peer-to-peer lending/ marketplace lending are very useful examples to define activities of ASUs that are a direct extension of banking since these services are either provided by financial institutions or already covered by the scope of activities fundamental to the value chain of core banking services (see above). Those services may also be provided on a stand-alone basis to customers without any direct connection to the core banking services of an institution and should in this case not be considered as a direct extension of banking.

6. **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?**

   General remarks

   We hold the view that the proposed criteria to determine activities "ancillary to banking" (and hence ASUs) are far too wide and undetermined.

   Since ASUs are financial institutions under the revised CRR definitions, they not only have to be included in the scope of consolidation (where a consolidation situation applies) but also contribute to the 50% threshold test for financial holding companies (Article 4 no. 1 para. 20 CRR).

   The purpose of prudential consolidation is to extend supervision from the level of a single institution to its group entities operating in the financial sector to enable a holistic assessment of banking-specific risks. Therefore, entities should only be included as ASUs in the scope of prudential consolidation if their activities incur or contribute to banking-specific risks.

The approach to identify ASUs through indeterminate activities considered to "support, complement or rely on banking" does not meet this objective and would considerably increase the number of entities qualifying as ASUs. This effect is further amplified if the term "banking" is understood to encompass services that are, in fact, not exclusive to the banking sector.

The proposed criteria may hence result in an arbitrary qualification of groups as financial holding groups, even if their principal activities are mainly unrelated to banking business. This would overstretch the scope of prudential consolidation beyond any reasonable degree. Consolidation would apply in cases where the regulatory goals of consolidated supervision are not applicable and where accordingly the limitations of fundamental freedoms associated with consolidated supervision are not justifiable. We would also note that EBA Guidelines to this effect would not provide NCAs with tangible criteria to identify cases where prudential consolidation is really warranted and purposeful to mitigate risks.

We therefore urge EBA to reconsider the approach outlined in Section 4.3 of the Draft Guidelines in line with the following comments.

The term "banking" (paragraph 16)

Paragraph 16 refers to Annex I, points 1 to 12 and points 15, 16 and 17 to Directive 2013/36/EU as well as to Annex I, Section A and B to Directive 2014/3/65/EU to define the term "banking" in the context of "ancillary to banking". This approach is inconsistent with the proposed definition of "banking" in the context of "direct extension to banking" (there referring to deposit-taking, lending and guarantee business only).

The Draft Guidelines do not explain why the same term "banking" used in the immediate context of the same CRR definition should have two different meanings. It appears that such a distinction was not intended by the legislator – otherwise the legislator would have used distinct terms. In particular, MiFID investment services and ancillary services should not be considered "banking". This would jeopardize the proper separation of the dedicated prudential frameworks for credit institutions in contrast to investment firms. Investment services can be (and often are) provided independently from core banking services and are regularly associated with less risks. This is also why prudential requirements on the provision of investment services are addressed in the specific framework of the IFD/IFR (including consolidation rules).

If implemented as proposed, the guidelines would even capture activities as "ancillary to banking" which are considered to "supplement, complement or rely on" MiFID ancillary services, which are themselves ancillary to MiFID investment services, which are not banking services. This approach would include a vast number of activities without any apparent connection to banking services and hence would render the concept of "ancillary to banking" completely indeterminate. This cannot be the regulatory intention behind the Guidelines.

We therefore suggest defining the term "banking" in a uniform manner both in the context of "direct extension to banking" and "ancillary to banking". This definition should refer to core banking services but exclude MiFID investment/ancillary services.

Support to banking (paragraphs 19 and 20)

The proposed criterion "supports banking" to define services "ancillary to banking" seems reasonable in general.

However, the explanations and examples provided in paragraphs 19 and 20 do not adequately convey the principle that ASUs support banking services of institutions in a supporting, hence ancillary

capacity: ASUs provide assistance and support services to institutions that are necessary or useful for the performance of banking services by institutions. This typically covers outsourcing cases (the performance of a process, a service or an activity that would otherwise be undertaken by the outsourcing institution itself) and other support services of a predominantly technical or operational nature.

The foundation of this principle lies in the former CRR definition of ASUs which referred (in addition to the statutory examples of ownership or management of property and data processing services) to similar activities that are "ancillary to the principal activity of one or more institutions". This principle still prevails in the revised CRR definition which now refers (next to the substantially unchanged statutory examples) to any other activities "ancillary to banking". The principal activity of institutions is banking, and banking is commonly understood as the principal activity of institutions – both terms are interchangeable. The change from "ancillary to the principal activity of [.] institutions" to "ancillary to banking" in the CRR definition hence does not suggest a departure from the view that ASUs support banking services of institutions in an ancillary capacity.

In contrast, the activities that in EBA's view should be seen as supporting banking also include generic descriptions of services (e.g. process optimization, risk management and regulatory compliance support, market research, big data analytics, innovation and digital transformation, marketing activities) which – depending on the individual circumstances and the nature of the particular service – could be provided in an ancillary or in a non-ancillary capacity to either banks or non-banks. This is negating the principle that ancillary services are typically provided in an outsourcing context and bearing the risk of extending the scope of the ASU definition to entities not supporting or complementing banking services but providing general or banking-unrelated services.

We hence recommend clarifying that those (or other) services may be seen as supporting banking only under the condition that they are in fact provided in an ancillary capacity to institutions.

Complement banking (paragraphs 21 and 22)

The concept of "complements banking" outlined in paragraphs 21 and 22 is not suitable to define services "ancillary to banking". It would cover all cross-selling scenarios where an institution and a potential ASU of a group are targeting or soliciting the same customer base, regardless of the nature of the services provided.

This would completely disregard the principle that ASUs provide assistance and support functions to institutions that are necessary or useful for the performance of banking services by institutions (see above). The case of institutions and non-regulated entities soliciting the same customer base with their respective services constitutes a very different and in fact opposite scenario. It does not relate in any way to the CRR definition of ASUs and accordingly does not provide a justifiable attachment point for consolidated supervision.

We hence suggest deleting this concept in its entirety.

Reliance on banking (paragraph 23)

We consider the inclusion of "reliance on banking" as a criterion for identifying activities ancillary to banking as too far-reaching and inappropriate. This concept has no foundation in the CRR definition of ASUs and provides no rationale for prudential consolidation. The basic principle of the ASU definition – an entity providing ancillary services to support banking services – is reversed to scenarios where banking services support activities (whether ancillary or not).

Typically, an entity is neither able to assess nor influence the use of its services by a third party and consequently cannot assess the reliance of that third party on its services, while it is also unlikely that the reliance on a service by a third party influences the provision of this service by the respective entity. As such, “reliance on banking” should not be considered as a criterion for identifying activities ancillary to banking. In particular:

Paragraph 23(a) (relies on banking products) merely provides a circular definition ("relies on banking when it relies on relevant banking products") enriched with further unclear terms ("significantly"). It remains unclear which additional scenarios (that are not already covered by the concept of "support to banking") this element is supposed to cover. Applied literally, any service provider targeting clients in the financial sector would qualify as an ASU, irrespective of whether the services are provided in an ancillary capacity to an institution of the group.

Paragraph 23(b) (relies on funding) clearly has no foundation in the CRR definition of ASUs which requires an assessment of the entity's "principal activity", not of its sources of funding. This is evidently not a relevant factor. If applied as proposed, 23(b) would potentially bring any subsidiary of an institution within the perimeter of the ASU definition, regardless of its activity.

Both tests go far beyond the rationale for including ASUs in the scope of prudential consolidation. We hence suggest deleting the concept of “reliance on banking” completely.

7. **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?**

   We struggle to see the practical intention behind this limitation, considering that the main effect of an extended interpretation of the term “ancillary to banking” (and the according qualification of entities as ASUs) would apply anyhow in the context of consolidation and/or participations only. In general, we would assess the need to limit the proposed interpretation of a universally applicable term to specific cases as an indication that this interpretation is not sound.

8. **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?**

   We refer to our answer to question 6 above.

9. **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?**

   The deliberations in paragraph 24 and onwards on operational leasing etc. appear flawed insofar as they refer back to the concepts of "complements banking" or "relies on banking". Operational leasing, ownership/management of property and data processing services are statutory examples of services that support banking in an ancillary capacity, typically in an outsourcing context.

   The given examples confuse this concept by introducing further arbitrary scenarios of cooperation between an institution and another entity, even including cases where the entity itself procures banking services as a customer for the purpose of carrying out its own business, and generally seem to lack relevance for the purpose of prudential consolidation.

   We therefore suggest deleting the aforementioned criteria and examples.

10. **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?**

    No particular comments.

11. **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?**

    No particular comments.

12. **In general, is there any other activity or criteria not explicitly mentioned in these guidelines that should be considered to identify activities as either a 'direct extension of banking' or 'ancillary to banking'?**

    As stated above in our response to question 6, we would like to reiterate that the definition of ASUs should foremost be guided by the principle that ASUs support banking services of institutions in an ancillary capacity, i.e. provide assistance and support services to institutions that are necessary or useful for the performance of banking services by institutions, typically in an outsourcing context.