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Bundesverband deutscher Banken e. V.
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Deutscher Sparkassen- und Giroverband e. V.
Verband deutscher Pfandbriefbanken e. V.

Die Deutsche Kreditwirtschaft

Comments

EBA Consultation Paper

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

Lobby Register No R001459
EU Transparency Register No 52646912360-95

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Berlin, 7 October 2025

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General comments

The proposed EBA interpretation of the term "Ancillary Services Undertaking" (ASU) goes beyond the wording and the legislative intent of Article 4(1)(18) CRR III by introducing overly broad criteria—particularly "reliance on banking", including sub-criteria such as "reliance on banking products" and "reliance on funding" which could be seen as exceeding its mandate. These elements, while relevant in the context of identifying economic dependencies in the large exposure regime, are conceptually unsuitable as decisive factors in defining an ASU.

In addition, the EBA's approach effectively overrides Level I legislative provisions in Art. 18 (8) CRR. This means that the supervisory authority’s discretion to apply supervisory consolidation due to a significant step-in risk resulting from funding dependency would now lead to mandatory supervisory consolidation as ASU and thus as a financial institution through a Level III guideline.

This interpretation risks requiring the inclusion of numerous non-financial subsidiaries—particularly those dependent on intra-group funding—within the prudential scope of consolidation, regardless of their actual role or size. This would contradict the intention behind Article 89 CRR, which limits the inclusion of industrial or real-economy companies in the financial sector. Reclassifying such entities as ASUs would inadvertently turn them into financial institutions under supervisory law, thereby rendering existing prudential limitations ineffective—an outcome unlikely to have been intended by the legislator.

For undertakings that are just interlinked with a banking group solely by receiving a banking service or product, it must be ensured that they are excluded from the ASU definition. Otherwise, there is a risk of punitive regulatory consequences, such as capital deductions or higher risk weights.

Furthermore, the EBA's unexpected criteria could lead to a disproportionate operational burden, especially on smaller non-financial companies that have not previously been subject to regulatory compliance. The materiality threshold under Article 19(1) CRR is significantly lower than that of commercial law, which could force the inclusion of entities not consolidated commercially. To ensure proportionality and regulatory clarity, the assessment of ASUs should be limited to companies already included under commercial consolidation. If the EBA proceeds with its current approach, sufficient lead time of at least one year should be granted to affected entities to adapt to these extensive new requirements.

Overall, the extensive proposals contradict the general effort at various levels to reduce the complexity of EU banking regulation. Due to the introduction of various new terms, such as

- an activity being “fundamental” to the value chain of core banking services (paragraph 13 of the draft guidelines),
- an activity being “related to lending”,
- an activity “complementing” or “relying” on banking,

as well as the inconsistent definition of terms and the scope of the analysis within the guidelines, such as

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- the analysis of entities inside and outside the scope of consolidation for the purpose of Art. 4 (1) No. 18 letters a) and b) CRR,
- an inconsistent definition of the term "banking" for the purpose of Art. 4 (1) No. 18 letters a) and b) CRR,

the draft guidelines introduce additional layers to the analysis of an ancillary services undertaking, and thus further complexity to the EU banking regulation framework. This degree of complexity was not mandated by the Level I text. As explained in the following sections, we therefore recommend various amendments.

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

General provisions (para. 12)
We are critical of the requirement in paragraph 12 according to which every undertaking included in the consolidation situation of an institution should be regarded as an ASU for any other undertaking. We are generally of the opinion that categorising an undertaking as an ASU must be the responsibility of the individual institution and may or should not be required to follow the categorisation of another institution. Particularly in borderline cases with a certain scope for interpretation, institutions can come to different conclusions. It is also important not to forget that in individual cases, there may be other reasons or motivations for a more generous interpretation and, then as a result, inclusion in the consolidated situation, such as avoiding CET1 deductions or achieving consistency with commercial law consolidation to reduce operational expenses.

There may also be cases in which several institutions all hold participating interests in an undertaking, however, only some of the institutions must consolidate this participating interest for supervisory purposes and other institutions are exempted (e.g. due to Article 19 CRR). It is not clear here why the latter institutions should be exempt from the general rule set out in paragraph 18a of the Guidelines, which states that an undertaking, which is not part of their regulatory consolidation, should not qualify as a provider of ancillary services.

Please clarify explicitly if "consolidated situation of an institution" refers to regulatory consolidation pursuant to the CRR. We assume that this should be the case and therefore suggest adding a reference to Art. 4 (1) (47) CRR (e.g. *"as defined in …"*).

Due to its wording as a general requirement and its placement directly at the beginning of the Guidelines, we assume that for almost every undertaking with which the bank has a client relationship, the institution needs to check whether it is being treated as an ASU by any other institution. This information is, however, not part of the scope of regulatory Pillar 3 – disclosure requirements of institutions and therefore not publicly available.

Implementing a checking process of this kind would result in an immense amount of additional effort and costs, not least since the checking process would not be a one-off, but would have to implemented regularly. A process that requires continual monitoring as to how undertakings

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are treated by other undertakings in regulatory terms goes far beyond established KYC or lending processes. This runs counter to the current initiative to simplify banking regulatory requirements.

We would therefore welcome the removal of the relevant checking requirement, allowing institutions to make an assessment based on the information they have available to them. If the EBA considers this requirement indispensable, the corresponding checking must be limited to cases that are significant to the institution subject to the check.

Treatment of CIUs
Regarding point 12, we suggest adding CIUs as defined in Art. 4 (1) (7) CRR to the types of undertaking explicitly excluded from the definition of ASU in point 11 a. This would be aligned with the EBA's guidance that CIU can generally not qualify as "financial sector entity" (and accordingly not as "financial institution", of which "ancillary services undertaking is now a "sub-type"). See e.g. the respective statements in the EBA's final draft RTS on consolidation (EBA/RTS/2021/04) (p.59) and in EBA Q&A 2015_2383.

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.

Activities as direct extension of banking (para. 13 point a)
In relation to Section 4.2, Paragraph 13.a., we understand that the term "banking" seems to be supposed to be understood as services pursuant to points 1, 2 and 6 of Annex I of the CRD. This clarification and limitation are welcome and agreeable.

However, the term "activities that are fundamental to the value chain of the core banking services" per se creates another layer of uncertainty. The term "fundamental" is vague and leaves a lot of room for interpretation. As an extreme example, it could be argued that HR services are "fundamental" in this sense because the provision of core banking services is impossible without the bank's staff. From the examples listed in Paragraph 14 we take that the example of HR services is probably not supposed to be covered. However, there will certainly be various other activities that won't be easy to classify as "fundamental" or not.

Against this background, we suggest replacing the vague terminology used in the draft guideline with a more concrete one, e.g. "activities that are an indispensable part of core banking services…". This would help distinguishing activities that deserve being considered as an extension of banking from those that are only ancillary to banking.

Treatment of CIUs (para. 13 point b)
CIUs as defined in Art. 4 (1) (7) CRR should explicitly be exempted from point (b) to ensure that they are not qualified as ASU / "financial sector entity" / "financial institution". This is to align the proposal with the EBA's established guidance on CIUs (already see our answer to

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Question 1). The CRR definition of CIU also encompasses types of CIUs that may qualify as "shadow banking entities" (e.g. money market funds or certain hedge funds). However, for purposes of the CRR rules on consolidation, own funds and RWA, all CIUs should clearly be exempt from qualifying as ASU / "financial sector entity" / "financial institution".

We consider the exemption of funds (CIUs within the meaning of Article 4(1)(7) CRR) from the definition of providers of ancillary services within the meaning of Article 4(1)(18b) CRR to be appropriate, not least because of the problematic customer reference in the new definition in CRR III with regard to real estate-related activities. In banking practice, this could mean that, for example, an investment company's client relationship with a financial undertaking, which is not otherwise connected to the undertaking subject to checking by means of investments or similar, could already qualify as an ASU. Example: The subsidiary real estate management company leases an office property to a bank that belongs to another group of institutions, e.g. a foreign group, with which it has no legal relationship beyond the tenancy agreement.

Q3. 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'?

No comments.

Q4. 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 exten-sion of banking'? In particular, do you find the definition of and link to core banking services, and the related list of activities sufficiently clear?

Scope of para. 14 point c

For clarification purposes, we request that the words 'whose main activities are core banking services referred to in points 1, 2 and 6 of Annex I to Directive 2013/36/EU' are added after 'financial institutions' at least at the beginning of paragraph 14. Even though the comprehensive list in paragraph 14 is fundamentally understandable after careful consideration, we assume that this list will lead to the inclusion of companies in the prudential scope of consolidation that have not yet been included, as the list is very broad. Sufficient time is therefore required for implementation.

Differentiation direct extension of banking versus activity ancillary to banking

It must be highlighted that Article 4(1) point (18) CRR makes a systematic distinction in letters a) and b) as to whether the principal activity of the undertaking is a direct extension of banking (letter a) or the undertaking performs an activity that is ancillary to banking (letter b). Although both points are inherently related to banking activities, this should not mean that a sharp distinction, where possible, is unnecessary. Otherwise, there is a risk that the definition of ASU will become too broad and ultimately ineffective.

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In light of the aforementioned, we propose that the activities specified in Paragraph 14 a), f) and g) (namely, brokerage of loans and deposits, management of risks stemming from core banking services, and services related to repossessed assets) be regarded as ancillary to banking. These activities are not intrinsic to the core banking operations (i.e. lending or deposit taking) but rather provide support at the outset or in the aftermath. Their inclusion into core banking services appears disproportionate. This is supported by the fact that Paragraph 20.c) of the consultation document names general "risk management" as an example of an "ancillary service".

Additionally, activities relating to "repossessed assets" should generally only be taken into consideration if the relevant asset is subject to the management of non-performing loans of the institution. This might be the subject of restructuring, for example, or when pledged assets are liquidated in rescue acquisitions (see paragraph 14 g). Services relating to assets obtained by an institution through a strategic investment outside the context of reducing non-performing loans should not be relevant in the context of the ASU-definition. This applies both in the context of point a) and b) of Art. 4 point (18) CRR.

The activity of debt recovery, as outlined in Paragraph 14 d), should not be regarded as an extension of banking or an ancillary service at all, as it is not a specific activity of the banking sector and does not imply risks that require being covered by prudential supervision. In essence, all forms of commerce necessitate debt recovery, meaning that this should be excluded from the scope of the ASU definition.

Creditworthiness assessment (para. 14 letter c)
In the list of activities in paragraph 14 letter c, the creditworthiness assessment of individual clients is also listed. Irrespective of any lending activities, there are companies that compile ratings/creditworthiness assessments of private individuals or undertakings and offer them to a broad market. These are, for example, rating agencies whose ratings are generally used by capital market investors, but also by public entities. Banks use the ratings in addition to their own creditworthiness assessments. Another example is providers of creditworthiness assessments, such as Schufa in Germany. The data or creditworthiness scores are also used in many other sectors in addition to banks, such as by telecommunication businesses, insurance firms or landlords.

In our opinion, such activities, which are offered to anyone interested and which are also used on a large scale by other sectors, should not be considered a direct extension of banking.

On a side note: Where the aforementioned service providers offer their services to various industries, it is not possible to determine to what extent use specifically by banks would constitute a principal activity according to the criteria set out in section 4.5 of the consultation paper. The reason is that the figures published by the providers do not include any breakdown of turnover, assets or employees by user industry. Such information is not published.

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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?

In general, we reject the inclusion of activities that are "related to lending." From our point of view, this term is too vague because it is unclear what would be covered by it.

Additionally, point a) of Article 4(1)(18) refers to an extension of banking. However, if a service does not pertain to an activity that requires a license under the CRD and is not subject to banking supervision, it should not be included under banking activities either. Otherwise, the term becomes blurred. Hence, a corresponding clarification should be made.

With regard to crowdfunding and peer-to-peer lending, we would welcome clarification that these activities would have to be carried out on a commercial scale. An undertaking that sometimes grants personal loans via such a platform for its own financial investment or launches a crowdfunding initiative may not fall under the definition of an ASU. The further condition that it has to be a principal activity could, in these cases, be moot if the receivable dominates balance sheets of non-capital-intensive service providers and it makes up more than 50% of assets. (See also our comments on Q11).

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?

The criteria introduced under paragraphs 16 and 22 to qualify activities as ancillary to banking are already very wide-ranging. In particular, we would ask the question, should the regulatory consolidation or deduction requirements under paragraph 18b also apply to indirect participating interests in an ASU, which are held jointly with other institutions if they constitute a joint liability arrangement within the meaning of Article 113(7) CRR? In our view, the risk from these indirect participating interests is very low. Without conducting another materiality assessment, the regulatory consolidation requirement will not lead to appropriate outcomes. In this context, we also favour raising the thresholds introduced in Article 19(1) CRR, which allow institutions not to include a subsidiary or an undertaking in which a participating interest is held in the scope of banking supervision consolidation. In our opinion, the relevant question should be what specific amount of participating interest is acceptable in order not to trigger a consolidation requirement. In order to achieve the goal of closer alignment with the scope of consolidation under commercial law, only those undertakings that are classified as material under the respective accounting framework should be considered.

Support to banking
We are in favour of only qualifying undertakings as an ASU if they carry out an activity that can also be considered ancillary to banking and not those activities that banks may carry out in

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individual cases, but which do not constitute originally regulated banking business. In particular, this affects finance leasing, which does not constitute originally regulated banking business. Such an interpretation would, in our opinion, go beyond the purpose of regulatory consolidation and/or capital deduction requirements, which consist of having regulatory access to non-banks that are conducting supervised banking business or preventing the multiple allocation of regulatory capital.

The activities listed in paragraph 20 are therefore too wide-ranging. We would ask that ancillary activities to the customer relationship of consulting on competitive and strategic matters, research or marketing activities are removed from the list of activities under consideration. We also do not understand why supporting a bank with its administrative activities, such as human resource management or document management, are considered activities within the meaning of Article 4(1)(18b) CRR.

Complement banking
The new definition of ancillary services undertaking is relevant for, inter alia, the inclusion in prudential consolidation. The objective of prudential consolidation is to enable indirect regulatory access to non-institutions. The scope of prudential consolidation only includes group entities operating in the financial sector – with the aim of identifying the bank-specific risks of a particular bank and its subsidiaries or undertakings in which it holds participation. This also includes ancillary services undertakings. However, businesses should only be classified under this term if their activity is associated with specific banking risks.

This means that not every activity can be meant as "ancillary", but instead only those that have a supporting relationship to banking activities, i.e. that enable or facilitate them. In particular, the wording of the English term 'ancillary' suggests this, to the extent that this term means 'supporting or providing assistance' (synonym: 'auxiliary'). What is not meant, however, is that the term 'ancillary' covers any activity other than the banking activity defined above. Any such interpretation would go beyond the purpose of the consolidation provisions, which is to have regulatory access to non-banks that conduct or are involved in supervised business.

Including activities that "complement" banking may have the consequence of covering a very broad range of practices that do not comply with the background explained above. The explanation of the term „complement" in Paragraph 21 of the Draft Guideline also does not contribute to the required delimitation:

In our understanding, the specific issue referred to in Paragraph 21 a) is that the undertaking introduces a new group of customers to the bank. This activity itself does not imply bank-specific risks, which are only associated with the bank's own activities and products and are already covered by banking supervision.

Regarding Paragraph 21b), it should be noted that this would indirectly include the provision of non-banking services and products by a non-bank into banking supervision. This scenario, however, does not imply additional bank-specific risks and does not require inclusion into prudential supervision.

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In our opinion, the interpretation of the term 'ancillary to banking' is very broadly defined, which is also reflected in the examples listed. This broad interpretation is only justifiable in conjunction with a restriction to undertakings which, if assumed to be ASUs, also meet the criteria for inclusion in banking supervision consolidation. In this respect, it can be assumed that there is a closer connection to banking activities than with other multi-client service providers.

It is important to understand here that such a broad interpretation of the term ancillary activity can only exist if it is restricted to undertakings belonging to the same group. Without this restriction, the differentiation would lead to unwanted effects.

Reliance on banking
In our view, "reliance" on "relevant banking products or services provided by an institution or a financial institution of the group" should generally not result in a classification as ASU. In summary, this concept:

1) is not covered by the wording or intention of the CRR;
2) is not in line with the concept set up for prudential consolidation; and
3) would ultimately mean that almost any undertaking would have to be qualified as an ASU, regardless of the nature of its business activities.

Therefore, paragraphs 17 c and 23 should be deleted. In more detail:

The definition of ASU in Art. 4 (1) (18) CRR is designed to capture undertakings that support "banking" (i.e. actively help the institution/banking group with such activities) and does not intend to capture undertakings that are in a "client" situation or only receive or rely on banking services or products.

This was clear for the previous versions of Art. 4 (1) (18) CRR. There is no reason to assume that the new definition of Art. 4 (1) (18) CRR now wants to capture "clients" or group undertakings in a comparable situation to a client insofar that they only receive banking services or products. Moreover, the concept of "reliance on" is not aligned with the concept of "principal activity" as foreseen by Art. 4 (1) (18) CRR. The reception of e.g. KYC information or a loan by the undertaking in question is not a suitable "principal activity" and cannot be assessed on the basis of the relevant criteria for "principal activity".

In our opinion, the majority of businesses – and nearly every industrial company or investing business – rely on bank credit. While the criteria set out in Article 4(1)(18) CRR tend to suggest that the services provided by the ASU complement or support the activities of the institution (i.e. it depends on the nature of the company's activities), the relationship in the case of the 'reliance' criterion points in the wrong direction. The only decisive factor is that the institution supports the company – the nature of its business activities is then no longer relevant. In this respect, we do not consider the criterion of 'reliance on banking' to be covered by the wording and intention of the CRR.

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The entire "reliance on banking- angle" "looks in the wrong direction" and should therefore be deleted from the Guidelines (i.e. not only in 17 c and 23, but also where this concept is repeated in this proposal, especially in 25 b i to iii, 26 c and 27 c, for more details see below).

Specifically regarding 23 b, note that such an approach would basically negate that only certain entity types should be in scope of regulatory consolidation according to Art. 18 (1) – (6) CRR (namely only "institutions" and "financial institutions").

The proposed 23 b might result in regulatory consolidation and "financial sector entity" (FSE) classification for the purpose of Art. 4 (1) (27) CRR of undertakings that should be neither.

One example would be pension funds (in the sense of the IORP II Directive (EU 2016/2341)) for bank employees that are by definition funded by the institution.

CIUs as defined in Art. 4 (1) (7) CRR might also be qualified as ASU when they receive funding by an institution, which would not be aligned with the EBA's established guidance on the exemption of CIUs from the definitions of "FSE" and "financial institution" (already see above on Q1).

A further example of practical relevance are undertakings that provide services related to insurance products or activities, but that do not qualify as insurance undertaking or a relevant holding company (e.g., insurance brokers). They should also not be captured as ASU, as the CRR generally does not want to capture undertakings that focus on insurance and insurance products in the regulatory consolidation circle.

Another example is a charitable organisation which is owned by a bank, if it additionally receives funding by a group entity.

The proposed 23 b could effectively result in the application of the IFRS scope of consolidation but broader due to the stricter materiality thresholds in Art. 19 (1) CRR instead of the regulatory scope of consolidation foreseen by the CRR, i.e. the actual activities carried out by the undertaking in question would basically become irrelevant (assuming that most subsidiary undertakings in a baking group rely to a certain degree on services and products of the institution/banking group).

This is clearly not envisaged by the CRR, which with the CRR 3 amendments only introduced a closer alignment of the CRR definition of "subsidiary" with IFRS (by adding an explicit reference to IFRS control via an explicit reference to Art. 4 (1) (37) CRR).

If the EBA wants to achieve a further alignment with the accounting rules for consolidation, this can only be achieved by an amendment of the level 1 text, and not via the Guidelines for ASU.

Should the proposed 23 b be driven by "funding concerns", it should also be noted that this topic is already addressed by Art. 18 (8) CRR. Here, it is in the supervisory authority's discretion to apply supervisory consolidation due to a significant step-in risk resulting from

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funding dependency while certain types of companies are explicitly excluded. This cannot be "overwritten" by the ASU-Guidelines requiring a mandatory consolidation through the designation as ASU, but would require an amendment of the level 1 text.

There seems to be no consistent approach with regard to the question, whether only services provided to entities inside of the group or inside and outside of the group should be considered in the analysis of the activity itself as well as the qualification as a principal activity. E.g., in Paragraph 25 a) leasing of assets to institutions or financial institutions within or outside of the group is mentioned as an example for a service supporting banking business. Other examples refer to group-internal services only. We suggest defining only services provided to other group entities as ancillary to banking in Paragraphs 16 to 23.

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 have to or may have to be included in the scope of prudential consolidation or are collectively held by institutions be-longing to the same IPS?

See our comments to question 6.

We welcome the limitation of the assessment of an activity as 'ancillary to banking' to undertakings that have to be included in the scope of prudential consolidation, as this reduces bureaucracy in other cases. Not only does this represent a step in the right direction in terms of the politically desired simplification of regulation, but also – as outlined in Q6 – a restriction of this kind is also necessary to prevent the very broad definition of an activity that is 'ancillary to banking' from leading to unacceptable effects.

Additionally, we suggest clarifying that an institution which generally does not have to perform prudential consolidation of its subsidiaries and participations is also not required to assess the status of an undertaking in which it only holds participation. This should be the case where there is a general lack of subsidiaries which qualify as institutions or financial institutions, or where there is no obligation to consolidate due to Art. 19 CRR or due to the absence of an authority's determination pursuant to Art. 18(5) CRR. This clarification is needed because paragraph 18(a) of the draft guidance also refers to 'any other situations specified in paragraphs 3, 5 … of Article 18' of the CRR, which could be misconstrued as meaning that an institution must perform the ancillary assessment even if it is generally exempt from prudential consolidation.

The same applies to undertakings subject to the equity method pursuant to Article 18(5) CRR. Clarification is warranted here because Article 18(5) of the CRR explicitly states that the equity method does not constitute the relevant undertakings being included in supervision on a consolidated basis.

More broadly, the obligation to perform an ASU assessment should be limited to the cases mentioned in Art. 18 (1) and (4) CRR (mainly subsidiaries or joint arrangements) also for

institutions that generally perform prudential consolidation, since these cases can be identified by the institutions themselves and do not need an anticipation of a determination by the competent authority. In addition, the necessary information on the entity's business activities may not be available for entities with smaller or no capital ties.

Generally, we see a risk of circular reasoning in paragraph 18(a) of the draft guidance, which refers to undertakings that 'have to or may be included in the prudential perimeter of consolidation'. In light of the aforementioned concerns, we are afraid that, ultimately, all participations in undertakings providing relevant services would have to be qualified as ASUs, given the potential risk of their inclusion in prudential consolidation. We therefore also suggest deleting the phrase 'or may'.

Finally, we reject the counter-exception of undertakings that are collectively held by IPS members. There is no reason why these undertakings should be treated differently to those held by non-IPS institutions. In particular, the argument set out in footnote no. 5 of Part 3 of the consultation paper, i.e. that such undertakings 'may still maintain a close operational and functional relationship with the banking activities of the IPS institutions', also applies to undertakings outside the IPS sphere. In the IPS sphere, common participations regularly have a very low financial importance to the individual institution and are only held for collective strategic purposes. If there is no obligation to consolidate these participations due to their low importance to the individual institution there is no point in requiring the determination of their status as ASU.

Therefore, imposing stricter rules on IPS members would constitute unjustified differential treatment. In this context, we would like to add that the term "collectively owned" is unclear and requires a precise definition. In particular, it is not clear whether a collective ownership implies the possibility of the IPS members to exercise of any form of control or significant influence on the entity.

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?

See our comments to question 3, 6 and 7.

In our understanding, Section 4.3 establishes a different concept of banking than Section 4.2 which only refers to points 1, 2 and 6 of Annex I to the CRD. It is not understandable why the same term "banking" should be understood differently in points a) and b) of Sec. 4 No. 18 CRR. Such a distinction was certainly not intended by the legislator – if that would have been the case the legislator would instead have chosen different terms. Interpreting the same term differently within a single definition is also not in line with basic legal principles. It undermines the simplification of supervisory law and impairs the practical application of the regulation by the institutions addressed. Therefore, we suggest sticking to the interpretation laid down in Section 4.2 which is plausible. This would also avoid any interaction or confusion with the term

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"ancillary services undertaking" within IFR framework (Art. 4 (1) No. 1 IFR). In particular, services and activities according to Directive 2014/65/EU should be deleted.

For example: The term banking in paragraph 16 of the draft EBA Guidelines on Art. 18 para. 1 no. 18 letter b) CRR III is too broad and would also include, for example, companies whose main activity is financial leasing. If financial leasing were also to be classified as banking, this would mean that, for example, all activities which support the leasing of leasing companies whose main activity is financial leasing and which constitute the main activity of that undertaking would have to be classified as ASU. That would be clearly too far and would overshoot the mark, as the leasing business differs fundamentally from banking in some respects. This applies in particular to activities that support or complement leasing. For example, services for changing tyres on leased cars are important complementary services to leasing as part of bundled leasing packages.

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 illus-trative examples provided therein adequately defined?

Introductory wording of para. 25, 26 and 27
Regarding this introductory wording in 25, 26 and 27 "Notwithstanding the general criteria provided in 16 to 23" we suggest clarifying explicitly what exactly that is supposed to mean.

Especially if this is supposed to mean that for the cases dealt with in 25, 26 and 27 (namely "operational leasing", "ownership or management of property" and "provision of data processing services"), points 16 to 23 do *not* apply. Or please clarify that points 16 to 23 apply cumulatively, if that was your intention.

Application of the aforementioned paragraphs should be cumulative. In particular, the criteria provided by 18 would help to ensure that undertakings are not too broadly classified as ASU and should therefore also apply for the cases of points 25 to 27.

This is especially important regarding undertakings that are not interlinked with a banking group other than by receiving a banking service or product (e.g. a loan). They should be excluded from the ASU definition based on 18 to ensure that only undertakings whose principal activities are truly "ancillary to banking" are captured (and who are not just clients of banks).

They would otherwise run the risk of being classified as "financial sector entity" (FSE), which results in the application of punitive rules for deductions and risk weighting, although the undertakings themselves do not engage in any "financial" activities. Unfortunately, the CRR 3 deleted the prior restrictions to ASUs that are part of a banking group (i.e. the former Art. 4 (1) (27) (c) CRR: "an ancillary services undertaking included in the consolidated financial situation of an institution;"). Now, ASUs are just a subset of "financial institution", where no further restrictions apply to the resulting classification as FSE (Art. 4 (1) (27) (b) CRR). It is not clear that this deletion was intended as significant a broadening of the definition of FSE beyond the effect of the new definition of "financial institution".

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If you instead want to adhere to the general principle that 16 to 27 do not apply cumulatively, please ensure by other amendments that the scope of the ASU definition under points 25 to 27 is not applied to broadly, ideally as proposed under 2. below (i.e. by deletion of the "reliance" cases).

Differentiation between para. 25a) and 26 a) i)
The differentiation between the examples in paragraphs 25a) and 26a)i) does not seem to be very clear, in our opinion. As we understand it, leasing premises from a subsidiary of the bank used for banking operations would come under both 'operational leasing' and 'ownership or management of property'. In order to be able to apply the differentiation more appropriately for other situations, we would like to understand how the differentiation is to be interpreted here and request clarifying examples of such. In relation to the ownership or management of property, we are of the opinion that the interpretation of this legal example should be limited to the case that is mentioned in Paragraph 26 a) i), i.e. cases where the properties owned or managed are used to support the operations of banking business.

Consequential amendments resulting from the deletion of the "reliance concept"
The parts of the proposal that are based on the "reliance" concept i.e. 25 b i to iii, 26 c and 27 c should be deleted – due to the reasons already explained above.

Operational leasing by itself is not a "financial activity", which is the reason why it is not included in Annex I of the CRD and not referenced in the list of principal activities for the definition of financial institutions in Art. 4 (1) (26) CRR (unlike "financial leasing").

In the example at hand, as well as in most cases of operational leasing in practice, the leased object itself does not support "banking" (in contrast to the leasing of bank office buildings referenced in 25 a).

The mere reception of funding from a bank does not change the fact that such activities should not be deemed "ancillary to banking".

Note that such a broad interpretation of relevant operational leasing activities, which are classified as "ancillary to banking" as they are captured by 25 b iii due to reliance on funding by institutions,[1] would also mean that specialised lending exposures, for which the CRR clearly intends a beneficial RWA treatment (Art 122a (1) CRR), could instead receive a detrimental financial sector entity (FSE) treatment.

In more detail: If the entity classification as FSE were to apply (via the classification of the SPV as ASU, which means it qualifies as "financial institution" and therefore FSE pursuant to Art. 4 (1) (27) (b) CRR), then an exposure which meets the definition of specialised lending exposure would not benefit from the transitional arrangements for specialised lending exposures under

[1] "significantly relies on funding provided by institutions or financial institutions of the group"

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Art 495b(1) CRR as the loss given default (LGD) in accordance with Art. 151(8) CRR would need to be based on those set out in Art 161(1) CRR.

To provide an example for 26 c vi: An undertaking whose principal activity is ownership and management of property significantly relies on funding by banks (loans).

The ownership of property by itself is not by itself a "financial activity" and is not included in Annex I of the CRD and not referenced in the list of principal activities for the definition of financial institutions in Art. 4 (1) (26) CRR.

Where the properties owned have nothing to do with banking (i.e. they are not used by institutions or by other undertakings engaged in "banking"), the mere reception of funding from a bank does not change the fact that such activities should not be deemed "ancillary to banking".

Ownership or management of property (para. 26)
In relation to the ownership or management of property, we are of the opinion that the interpretation of this legal example should be limited to the case that is mentioned in Paragraph 26 a) i), i.e. cases where the properties owned or managed are used to support the operations of banking business. Only this interpretation would be in line with the concept of covering bank-specific risks, as set out various times above.
It is unclear to which cases the second example pursuant to Paragraph 26 a) ii) refers. We agree to cover cases of realised collateral of non-performing loans managed by the undertaking, as this supports the banking business. To this end, we suggest clarifying the property owner (e.g., "the institution's ownership of the properties arises as a direct result of banking business"). Otherwise, Paragraph 26 a) ii) might be misunderstood as also relating to cases in which an institution's customer owns a premise managed by the relevant undertaking and finances the ownership with a loan. In such a scenario, however, the undertaking provides its service only to a third party (the customer) and not to the institution and therefore there is no element that could be considered as ancillary.

Similarly, we disagree with the classification pursuant to Paragraph 26 a) iv) and v) as these cases relate to premises that are not owned by the institution, but only by customers and other investors. Here, the recipient of the management service is the customer only and not an institution. A relation to the banking business is too distant and it does not bear any bank specific risks.

The example stipulated in Paragraph 26 b) iii) relates to marketing and should not be treated at all in the context of the concrete legal example of "ownership or management of property". It would go too far to include the marketing of banking products and services in the activities of owning or managing property.

In relation to Paragraph 26 c) we refer to our general critique on the inclusion of the aspect of "relying on banking" into the interpretation of the term "ancillary".

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Data Processing Services (para. 27)
Regarding the provision of data processing services, we believe it is necessary to limit this activity to services connected with bank-specific risks. This applies to examples such as the operation of core banking systems, as well as KYC and credit application tools. However, services that can be used by any business, such as running data warehouses or setting up HR applications, should not be included in this legal example. A corresponding clarification should be added to Paragraphs 27a and 27b.

We suggest deleting Paragraph 27c, as reliance on a banking product or service alone should not be a relevant criterion, see above.

Finally, there seems to be an editorial or wording mistake in point b. Point b starts with "complements", but is then confusingly "mixed" with "relies on" in a way that suggests that "reliance" is a subset of "complements", which was presumably not intended.

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?

No comments.

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?

A cumulative assessment of all relevant business activities for determining the principal activity within the meaning of Article 4 (1)(18) CRR III, in the event that the undertaking in question, which may qualify as an ASU, carries out more than one activity, quickly reaches its limits in practice, in our opinion (cf. para. 11 EBA/CP/2025/11). This also follows from the fact that activities performed both within and outside the group must be taken into account. We therefore suggest maintaining the pragmatic approach in accordance with the provisions in CRR II for determining the principal activity. There was no provision for a cumulative assessment of undertakings' activities in CRR II. Rather, activities were considered principal if the undertaking in question mainly carried out such activities.

We can also understand designating objective criteria for defining the principal activity of an undertaking. We do not consider the EBA's approach of identifying a principal activity based on certain thresholds being exceeded for the criteria listed, for example, in Article 4(20) CRR, which are used to determine a financial holding company, to be applicable in all cases (see paragraph 10 EBA/CP/2025/11). The main differences to the financial holding company referred to in the explanatory notes to the consultation paper are, in particular:

- Assessment of a 'third-party' undertaking: a financial holding company must assess the criteria based on its own consolidated financial statements. i.e. for the assessment they have access to accounting documents that have not been published. These documents are

not available for the assessment of an undertaking in which, for example, a participating interest is held.
- Fewer disclosure rights with a (small) participating interest: the undertakings included in the consolidated situation are all subsidiaries. In this case, the parent financial holding company has the right to request more detailed information. This is not the case with a participating interest.
- Smaller undertakings: many of the undertakings to be assessed will be smaller undertakings that have no connection to the financial sector themselves and will only become financial institutions because they have been classified as an ASU by an institution. The accounting and disclosure requirements for these undertakings do not in any way correspond to the standards for financial institutions.

We would therefore welcome a situation in which it was still possible for the undertaking to compile its own criteria with which to determine its principal activity. The figures given could be used as an initial assumption in this context, provided that the information was available.

Irrespective of that, we are particularly critical of solely using assets as the criterion. In this case, a secondary, asset-intensive activity at a service company with predominantly non-capital-intensive activities may be given too much weight, leading to an incorrect assessment. In this respect, if the criteria are to be retained in this form – to provide an indication, at least two of the three criteria mentioned should always be exceeded.

Q12. 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'?

No comments.