7.10.2025

**EBA consultation   
Draft Guidelines on ancillary services undertakings**

**Comments of the Austrian Banking Industry**

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

Para 11:

We welcome the clarification that undertakings already excluded from the definition of “financial institution” are likewise excluded from the definition of ASU. This appropriately eliminates exceptional cases where entities would otherwise qualify as ASUs despite not meeting the CRR definition of a financial institution.

Para 12:

Since ASUs are automatically classified as financial institutions under CRR3, institutions generally disclose undertakings qualifying as ASUs within their scope of prudential consolidation as “financial institutions.” As a result, it is not evident how other institutions can ascertain whether a specific undertaking has in fact been identified as an ASU.

**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.**

Para 13 point b:

We suggest clarifying in the Guidelines that Collective Investment Undertakings (CIUs) are outside the scope of these provisions, even though they may be classified as shadow banking entities pursuant to EBA/RTS/2022/06.

Furthermore, Article 1(4) of EBA/RTS/2022/06 provides that undertakings within the scope of an institution’s consolidated supervision shall not be identified as shadow banking entities. However, where an undertaking’s classification as an ASU rests solely on its stand-alone identification as a shadow banking entity—and that classification in turn requires prudential consolidation—this amounts to circular reasoning.

**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 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?**

The following critically examines whether the acquisition of real estate collateral by bank subsidiaries necessarily leads to qualification as an ASU.

The question of classification as an ASU is not merely terminological but has significant regulatory consequences—particularly for consolidation. Since the implementation of CRR III, ASUs are regulatory financial institutions and must be included in regulatory group consolidation.

If a real estate subsidiary is classified as an ASU, this means that its assets, liabilities, and risks must be considered at the group level. This can have significant implications for the institution: Previously isolated real estate holdings may need to be backed with risk weights for the first time. A new ASU classification may also mean that the bank must comply with regulatory ratios at the group level, even though no group supervision previously existed. These consequences are intended to prevent regulatory circumvention—but they can be disproportionate in individual cases if the subsidiary in question has little connection to banking.

### Ancillary Services Undertakings

CRR III (Regulation (EU) 2024/1623) has fundamentally refined the definition of an ancillary services undertaking. According to Art. 4(1)(18) CRR in the new version, an ASU is an undertaking whose principal activity consists of certain bank-related activities. The EBA guidelines distinguish three categories:

1. Direct extension of banking activity – i.e., activities that are fundamental to the value chain of the core banking services or exhibit typical banking risks (e.g., credit intermediation, loan servicing, collateral valuation).
2. Ancillary to banking activity – activities with a functional relationship to banking, evaluated according to the criteria of Support, Complement, or Reliance.
3. Similar activities – a catch-all provision allowing supervisors to classify new fields of activity as ASUs on a case-by-case basis.

The crucial factor is always that the company’s main activity falls under at least one of these categories. The guidelines specify clear thresholds: ≥ 50% of revenues, total assets, or employees are attributable to corresponding activities. If none of these thresholds is exceeded, supervisors can only exceptionally require ASU qualification in individual cases.

The new definition aims to ensure that subsidiaries substantially linked to banking are covered—thereby ensuring consistent application of the supervisory framework. As the EBA explicitly emphasizes, it is not solely the type of activity that is decisive, but the existence of a significant connection to banking.

### Direct Extension of Banking Activity

The EBA consultation paper lists various activities in paragraph 14 that are classified as “fundamental to the value chain of core banking services” and thus as a direct extension of banking activity. Under letter g, it mentions:

“acquisition, ownership, management and liquidation of repossessed assets for the direct or indirect interest of an institution or financial institution.”

This wording clearly targets the handling of realized loan collateral—typically real estate that a bank repossesses after loan termination (repossessed assets). The draft guidelines thus place this activity on the same level as classic bank-related functions such as credit servicing, creditworthiness assessment, or debt collection. In practice, a subsidiary whose main business consists of taking over and liquidating such collateral for the bank would therefore be considered an ASU. This clarification primarily addresses constellations in which banks outsource real estate ownership to special purpose vehicles to reduce non-performing loans. From a regulatory perspective, the aim is to prevent such NPL workout units from remaining outside the regulatory perimeter as “insignificant” industry subsidiaries, although they effectively represent an extension of banking.

However, it is essential that this regulation not be understood to mean that any real estate acquisition by a subsidiary automatically qualifies as a “direct extension of banking.” What is decisive is:

* whether the acquisition is part of a documented NPL strategy or a structured workout process; many banking groups have strategic concepts for reducing Non-Performing Loans (NPL), which also include handling non-performing loan collateral. For example, the ECB NPL Guidance (2017) explicitly requires banks with high NPL ratios to develop a foreclosed assets strategy as part of their NPL business strategy. Specialized units or subsidiaries are often used for this purpose, continuously taking over, managing, and disposing of such properties in a value-preserving manner. Such a structured approach is undoubtedly functionally embedded in banking activity—it is ultimately an extension of the credit process beyond the loan default phase. Consequently, a subsidiary focused on this main task would qualify as an ancillary services undertaking, as it makes a significant contribution to the settlement of the original banking business
* whether the subsidiary continuously supports the repayment of non-performing loans; in these cases too, the systematic recovery and liquidation of loan collateral is an integral part of the bank’s business model for NPL reduction (even without an NPL strategy)
* or whether it is an isolated opportunity transaction that corresponds to a strategic real estate investment without resulting from a planned NPL reduction. Consider, for example, taking advantage of a favorable market opportunity: The bank(ing group) opportunistically decides to acquire real estate outside the classic credit context—whether as an investment, for later rental/sale, or for strategic considerations beyond NPL workout. These do not occur regularly or predictably as part of risk management but are ad hoc and outside the usual loan processing channel. Also, these purchases are not made by a special workout unit as part of a reduction plan but can be considered one-time business decisions. In short: Such occasional purchases of real estate by a subsidiary represent a completely different quality than the systematic collection of loan collateral in the NPL context.

In the first two cases, there is a functional continuation of the credit process, as described in the ECB NPL Guidance. Opportunistic market acquisitions, however, are outside the typical credit and risk management process and should not be generally subsumed under paragraph 14(g).

### “Foreclosed Assets” in Light of the ECB NPL Guidance

The EBA consultation paper introduces the term “repossessed assets” in paragraph 14 point g for the first time. Previously, the term “foreclosed assets” was primarily known from the ECB Guidance for non-performing loans (2017).

It states:

“Foreclosed assets are assets obtained by taking possession of collateral or by calling on similar credit enhancements. They play an essential role in the NPL workout process, with clear internal policies, timetables for disposal, and regular reporting to senior management.”

From the definition of “foreclosed assets” (especially the wording “[…] assets obtained by taking possession of collateral”), an equivalence with the new term “repossessed assets” can be derived.

From the ECB Guidance for Non-Performing Loans (2017), the following can be further derived regarding “foreclosed assets”:

1. Always credit management:

* Foreclosed Assets arise exclusively from credit events (default, collateral realization) in the context of credit enhancement (see definition of foreclosed assets “credit enhancements”) of the underlying credit relationship. They are not the result of independent investment decisions.

1. The Goal is liquidation:

* The guidance recommends classifying Foreclosed Assets according to IFRS 5 (“held for sale”). This implies an intention to sell, not a long-term return or usage strategy.

1. Long-term holding = exception:

* According to the guidance, if a property is held for longer than 12 months, this is not an expression of an investment desire but of liquidation difficulties.

1. Link between the accounting treatment and the NPL:

* Valuation is based on the lower value of collateral value in the context of credit assessment and fair value less costs to sell (see ECB NPL Guidance Section 7.5). This makes it clear that the real estate valuation is still inseparably linked to the valuation of the loan.

### Conclusion

Only these cases—assets acquired as part of the workout process and held for credit realization—should fall under paragraph 14(g) as a “direct extension of banking.”

If the property in question is not the result of a bank’s loan realization, it is neither a foreclosed asset in the sense of the NPL Guidance, nor a repossessed asset in the sense of the EBA consultation paper. This distinction highlights that occasional market access in the real estate sector qualitatively differs from targeted NPL real estate liquidation. The relevance of the term “repossessed assets” lies in clarifying when real estate ownership is a consequence of banking (credit default)—only then does the close factual connection exist that the ASU definition of paragraph 14 g should address.

### Ancillary to Banking

Even under the category “ancillary to banking” in paragraph 26, the three criteria (Support, Complement, Reliance) of “ancillary” apply only in exceptional cases:

* Support: no infrastructure or process connection to banking business. According to the EBA definition, an activity “supports” banking when it significantly improves or enables banking operations. Typical examples of such support include IT services, personnel administration, or risk management for the bank. Real estate can also provide a support contribution—for example, when a group subsidiary manages real estate for bank branches, which has a clear infrastructure reference to the bank. However, in the case of an isolated opportunity purchase, such a direct reference does not exist: The acquired property neither serves to accommodate banking operations nor does it directly improve operational processes. Rather, it stands as an individual investment alongside the actual banking operation. Due to the lack of connection to credit realization (NPL reduction), the property acquisition cannot be considered a result of banking business according to paragraph 26 (a) (ii) of the consultation paper.
* Complement: no cross-selling or product reference. Complementary ancillary services would be, for example, proprietary real estate funds or real estate brokerage platforms that a bank offers to its customers in addition to round out the product range—activities specifically targeted at the bank’s customer base. However, the one-time purchase of a property outside the lending business does not target bank customers or core business and does not create a cross-selling effect.
* Reliance: no permanent dependence on financing or risk transfers from the bank. Although the funding of such an acquisition may be through bank funds, this does not automatically make the activity bank-dependent in the sense of the guidelines. Internal bank dependence would mean that the subsidiary can only operate its business model due to the continuous financial, risk-technical, or sales support of the parent institution. A single real estate purchase, on the other hand, can also be carried out without complex interaction with bank processes—it does not require a permanent refinancing line or risk transfer from the bank but can be funded singularly (e.g., by means of an intra-group loan or equity).

An occasional real estate acquisition does not fulfill any of these characteristics to a relevant intensity and should therefore not be qualified as ancillary in the sense of paragraph 26 of the EBA consultation paper.

### Necessary adaptions

The EBA should clarify that only real estate acquisitions as part of a NPL workout are covered by paragraph 14(g) or paragraph 26 (a) (ii). The context is decisive: If the real estate acquisition by a subsidiary takes place as part of a strategic NPL settlement or to support banking business, there is a functional connection to the core business—the classification as an ancillary activity is then appropriate. If, on the other hand, it involves occasional purchases due to market opportunities outside the NPL context with the aim of improving the creditworthiness of the non-performing loan, this integration is lacking. Such cases represent neither a functional continuation of banking activity nor an ancillary activity to banking, but isolated business decisions without strategic banking reference.

In this respect, the acquisition of individual real estate collateral should not be generally interpreted as a “direct extension of banking” within the meaning of Art. 4(1)(18)(a) CRR or “ownership or management of property” within the meaning of Art. 4(1)(18)(b) CRR.

**The wording for paragraph 14 point g should be adapted as follows:**

“acquisition, ownership, management and liquidation of repossessed assets ~~for the direct or indirect interest of an institution or financial institution~~ **where such activities are performed as part of the institution’s or financial institution’s credit workout**.”

This would ensure the necessary proportionality and prevent pure real estate investments without credit reference from unnecessarily falling within the regulatory consolidation scope.

**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 al-ready qualifying as financial institutions within the meaning of Article 4(1)(26) of Regulation (EU) No 575/2013?**

No comments

**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?**

Paragraphs 23, 25(b)(i) and 26(c):

In the consultation paper, the EBA appears to suggest that the qualification of an undertaking as an ASU is determined not by the nature of its activity, but by the existence of a significant link or connection to the banking sector. We consider that the introduction of the criterion of “reliance on banking” goes well beyond the intention of the legislator in amending the definition of ASU. The legislative wording is explicit in placing emphasis on the “principal activity” of the undertaking. An approach that treats reliance on funding from institutions or financial institutions as sufficient in itself—without an assessment of the principal activity—oversteps the mandate conferred upon the EBA. Such situations are already adequately addressed by the consolidation requirements relating to step-in risk under Article 18(8)(b) CRR. Furthermore, it remains unclear how this activity could be assessed as a “principal activity” based on the indicators set out in paragraph 30.

Accordingly, the proposals regarding “reliance on banking” set out in **paragraphs 23, 25(b)(i) and 26(c) should be excluded / deleted.**

With regard to the provision of banking-related services by an entity to an institution, the draft does not specify whether a one-time service is sufficient for classification or whether the service must be ongoing. Additionally, it remains unclear whether the significance of such activity within the entity’s overall operations should be taken into account. We propose that the criteria be clarified to reflect whether the frequency and relevance of the service provision are factors in the classification process.

**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?**

Para 18 point a:

The proposal limits the assessment to activities of undertakings that, if classified as ASUs, must or may fall within the prudential scope of consolidation under Articles 11 and 18 CRR. This expressly includes Article 18(5) CRR, under which the competent authority determines the consolidation method—typically the equity method by default—unless step-in risks are identified under Article 4 of Commission Delegated Regulation (EU) 2022/676. However, by adopting the formulation “may be included,” the proposal appears to extend to undertakings where there is only a theoretical possibility that the authority could require partial or full consolidation on the basis of step-in risks. In practice, this would mean that any capital link, however minor or remote, could trigger the assessment. Such an approach risks undermining the intention to limit the scope to material cases and could create disproportionate administrative burdens without enhancing prudential soundness.

The institution’s assessment should cover only those undertakings that—if classified as ASUs—must be consolidated and should not extend to entities whose inclusion depends solely on the discretion of the competent authority. The latter would not form part of the banking group absent such intervention.

Para 18 point b:

In our view, there is no sound basis for distinguishing between an undertaking collectively owned by stand-alone institutions that are not IPS members and the same undertaking when owned by IPS members. The consultation paper offers neither an explanation nor a justification for this approach.

**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?**

No comments

**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?**

Paragraph 25 (a):

In our view, the leasing of buildings or premises by large banking groups with real estate operations to other banking groups should not automatically be regarded as operational leasing ancillary to banking. This is particularly relevant where the lessee is an ASU that does not carry out any of the service or activity listed in paragraph 16 of the draft guidelines and is therefore not considered “banking”. Extending the scope of ancillary activities to such cases would blur the distinction between genuinely banking-related functions and unrelated commercial leasing.

**To ensure clarity and consistency, we propose to delete paragraph 25(a) or amend the provision as follows**

“the leasing of assets is provided to institutions or financial institutions within or outside the group (e.g. leasing of buildings or premises) **that are providing banking services or activities pursuant to paragraph 16**.”

Furthermore it would be worth considering whether the significance of services provided to institutions or financial institutions - whether within or outside the group - should influence the assessment of ASU classification. For example, if a leasing company leases a single asset to an institution, while the remainder of its business is unrelated to institutions or the group, the question arises as to whether the company should still be classified as an ASU, even if such activity does represent a material part of its operations.

We recommend aligning the definition of operational leasing in the EBA Guidelines with the concept of finance leasing under the IFRS framework. This alignment is especially relevant for publicly listed companies across Europe, where IFRS is widely applied. Users are familiar with IFRS rules and interpretations and having different regulations for different stakeholders within the same business creates unnecessary complexity and burden for those applying them.

Ownership or management of property

Regarding real estate management, the GL proposes that such activity should be considered reliant on banking when property ownership is financed by the institution. However, we believe this interpretation may not always be appropriate. For example, if a property is acquired using institutional financing but is managed by a property management subsidiary and used for non-banking purposes (e.g. a shopping center), classifying the entity as an ASU solely based on the financing aspect appears inconsistent – assuming there are no other factors that would support an ASU classification.

**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?**

The proposed process fails to specify the mechanism by which institutions will be informed of other activities considered similar to points (a) and (b).