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MR/MM

EACB comments on
Draft revised Guidelines on limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework under Article 395(2) and (2a) of Regulation (EU) No 575/2013

General comments

The EACB welcomes the possibility to comment on the EBA draft revised Guidelines on limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework under Article 395(2) and (2a) of Regulation (EU) No 575/2013. We support the approach implemented by the EBA in reviewing these Guidelines. **We believe that guarantee the stability of the framework, while ensuring coherence of the prudential framework and avoiding establishing new definitions is the right approach to ensure the simplification of the framework and reduce the burden of banking institutions.**

However, it is important to reestablish a materiality threshold to establish an exposure to individual shadow banking entities not contemplated in the Commission Delegated Regulation (EU) 2023/2779. The threshold should also be taken into account in the Delegated Regulation (EU) 2023/2779. Otherwise, institutions will benefit from a simplification under the Guideline but will be required to review all exposures under the Delegated Regulation.

In addition, it would be helpful if the EBA could clarify certain aspects on how to interpret certain **borderline situations in which classification hinges on the nature and materiality of an entity's activities.** In particular:

- For certain funds or holding companies whose activities are only partly related to shadow banking, clarify **on how to assess partial or ancillary activities.**
- For the identification of SBEs from countries that are not included on the equivalence lists but are subject to Basel III requirements or equivalent regulatory frameworks, **a list of countries (published by EBA) in which banks may be excluded from the SBE definition would be helpful.**

Finally, **we do not see any added value in imposing restrictions through hard limits**. The introduction of specific individual limits for SBE would entail an additional layer of complexity with corresponding operational expenses, which we consider neither sensible nor necessary. **A hard limit at the institution or group level could limit the lending capacity of the affected institutions within the EU and shift lending to countries outside the EU**. Precisely in view of the resulting competitive disadvantage compared to institutions outside the EU, a hard limit should therefore be avoided.

Answers to selected questions

Q1: Do you experience any difficulties in your identification process of SBEs, especially regarding whether the SBE definition as specified in Commission Delegated Regulation (EU) 2023/2779 is clear enough or do you see room for improvement or need for an update (please explain/provide clear examples)?

The definition of shadow banking entities in the Commission Delegated Regulation (EU) 2023/2779 provides a useful and broadly workable baseline. However, **its application would benefit from additional clarification in borderline situations where classification hinges on the nature and materiality of an entity's activities.**

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels
Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19
www.eacb.coop • e-mail : secretariat@eacb.coop

In particular, **for certain funds or holding companies whose activities are only partially related to shadow banking, more explicit clarity on how to assess partial or ancillary activities would improve consistency.** Introducing a materiality threshold for identification of shadow banking entities – also in the Delegated Regulation (EU) 2023/2779 - would also support a more proportionate and risk-based application, helping institutions avoid overly conservative or divergent interpretations while maintaining the regulation's intent. This is even more relevant in light of the proposed new reporting requirement for Template C 37.00, which will require an aggregate representation of the entire scope of exposures falling within the definition of Shadow Banking Entities - both on a consolidated and individual basis - and not just the ten largest exposures on a consolidated basis, as is currently the case.

A member also reported that commonly used statistical references such as ESVG or NACE codes were applied to identify entities such as money market funds, hedge funds, as well as leasing and factoring companies. However, such a reporting approach was subsequently challenged by the supervisory authority, which highlights **a lack of alignment between industry practices and supervisory expectations**. While certain ESVG categories (e.g. financial leasing corporations, factoring entities, or specific lending institutions) appear reasonably within scope, the overall perimeter remains insufficiently defined. In particular, broad or residual categories (such as other specialised financial institutions or unclassified entities) create uncertainty, as their inclusion in SBE definitions is open to interpretation. As a result, institutions face inconsistent supervisory outcomes and increased reporting risks, including potential rejection of submissions.

It could therefore be useful to consider:

- Closer alignment of SBE definitions with established statistical frameworks (e.g. ESVG/NACE);
- The introduction of a clear and exhaustive list of relevant sector or activity codes to support consistent classification;
- More granular guidance for ambiguous categories, to reduce interpretation risks and ensure supervisory convergence.

Particularly for smaller institutions, the current approach is resource-intensive and operationally burdensome, especially where exposures to SBEs are limited. Especially when there are no large exposures to SBEs, the approach requires significant effort without producing relevant output.

Another significant limitation is related to the **identification of SBEs from countries that are not included on the equivalence lists but are subject to Basel III requirements or equivalent regulatory frameworks**. Article 2(f)(i) of Delegated Regulation (EU) 2023/2779 is not clearly worded with regard to entities in emerging markets that are not part of institutional groups in the EU or in countries with an equivalent regulatory system. Guidance on how to demonstrate whether a third-country supervisory authority authorises and supervises the institution in accordance with the Basel Core Principles (BCP) for Effective Banking Supervision would be helpful. The risk is that all entities in non-EU countries and countries that do not meet EU standards and are not part of a group of institutions in EU countries or countries with equivalent regulatory systems are generally classified as SBEs. **A list of countries (published by EBA) in which banks may be excluded from the SBE definition would be helpful.**

Q2: Does the current guidelines' framework for setting internal aggregate and individual limits on exposures to shadow banking entities (as described in the principal and fallback approaches) provide sufficient flexibility and clarity for your institution's risk management practices? Are there specific aspects of the approach that you find challenging or would suggest improving?

The materiality perspective should be maintained in the SBE definition. By amending the draft Guidelines and excluding the definition of "Exposure to shadow banking", the previous threshold of 0.25% in relation to the institution's eligible capital has been eliminated . The materiality threshold should be (re-)included - also in the Commission Delegated Regulation (EU) 2023/2779. In addition, and taking into account the initiative to reduce the regulatory burden, we would encourage the EBA to raise the threshold to 0.5% of Tier 1.

Q3: Do you encounter challenges in obtaining sufficient data on SBEs (e.g., leverage, liquidity profile, interconnectedness, portfolio quality) to apply the principal approach? If so, please describe the main obstacles and how they affect your ability to comply with the Guidelines.

In low-volume transactions, the necessary documentation is sometimes unavailable or only becomes available after a delay. This applies in particular to indirect exposures arising from look-through or substitution. Banks encounter difficulties in obtaining the required data because some of this information is not publicly available and they do not have direct access to it, such as in the case of money market funds. For certain information, it is necessary to pay additional fees, for example, to law firms or commercial databases that are not freely accessible and charge for providing such information.

Since, in many cases, exposures are not material, they do not imply a significant burden with the current framework. In a worst-case scenario, these exposures are included in the aggregate shadow banking exposure, leading to an increase in the total shadow banking exposure and potentially revealing an excessive level of exposure

However, with the elimination of the materiality threshold of 0.25% of eligible capital, significant additional costs are likely to arise (see also Q6). The materiality threshold should therefore be retained in the Guideline and also be taken into account in the Delegated Regulation (EU) 2023/2779.

Q4: Under what circumstances does your institution apply the fallback approach, and what challenges have you faced in determining when it should apply? Do you see need for further clarification regarding the trigger conditions for the fallback approach?

The fallback approach also applies to institutions with larger SBE portfolios if certain information (e.g., interconnections, volatilities, and evidence of the adequacy of the credit analysis) is not available (or cannot be made available) or if the amounts involved are very small.

Q5: Did your institution experience operational challenges in integrating the binding SBE definition of the Delegated Regulation (EU) 2023/2779 into your internal limit framework?

While the stability of the prudential framework is a relevant element to foster predictability and adequate implementation processes, consolidating the regulatory products for credit risk should be a priority. Indeed, streamlining these products will enhance clarity, reduce complexity, and improve efficiency in risk management. Please refer to Q1 for specific difficulties currently faced by institutions.

Q6: Being part of the removed SBE definition, the previous threshold of 0.25% of the eligible capital for recognising exposures falling under the EBA/GL/2015/20 is deleted in the draft updated GL. Will there be any impact (costs, time required, etc.) for your institution? Please elaborate.

Eliminating the current threshold of 0.25% of eligible capital would lead to increased operational costs against a limited prudential benefit of monitoring very small exposures. Obtaining the necessary information involves considerable effort (see Q3). In particular, the inclusion of immaterial exposures could increase operational complexity without materially improving risk sensitivity. The aggregated amount of exposures to shadow banking entities should only be reported to the supervisory authority if it exceeds 0.25% of Tier 1 capital. In our view, the current threshold contributes significantly to a practical and risk-oriented implementation of the Guidelines.

Taking into account efficiency, as well as the regulatory measures currently announced by the supervisory authority to reduce the regulatory burden, the materiality criterion should remain in the Guideline, or standardisation should be achieved by incorporating the materiality criterion into the Delegated Regulation and extending it to 0.5% of Tier 1.

Q7: How does your institution determine the appropriate risk tolerance level for exposures to shadow banking entities within your overall business model and risk management framework? Which quantitative internal limits – either at the individual or aggregate level – do you apply on exposures to SBEs? Please describe the criteria, methodologies, or governance processes used to set these limits, and share any challenges or best practices you have encountered in their implementation.

NA

Q8: How do the internal aggregate and individual limits on exposures to shadow banking entities interact with the SREP process (as framed by Article 97 and Article 98 of Directive 2013/36/EU) and the competent authorities' assessment under Pillar 2? Are there any aspects of the guidelines or the SREP process that you believe require further clarification or adjustment to ensure effective supervisory review?

NA

Q9: How might the introduction of specific individual or aggregate limits on exposures to shadow banking entities affect your institution's willingness or ability to engage in activities giving rise to exposures to SBEs (e.g., lending, investment, intermediation, SFTs)? Please explain any potential impacts – positive or negative – on credit provision, market liquidity, or risk sharing, and provide examples or evidence from your institution's experience.

The proposed framework set out in the draft Guidelines, together with the requirement to establish internal individual limits, is expected to constrain institutions' capacity to provide financing to SBEs counterparties. While the prudential objective of addressing risks stemming from shadow banking is acknowledged, the current design may lead to unintended and disproportionate effects.

The draft Guidelines do not incorporate a materiality threshold for the recognition of an exposure to SBE. Consequently, entities may fall within the scope of the framework even where only a minor and non-core component of their activities qualifies as shadow banking.

This may result in a broad range of otherwise standard counterparties being classified as SBEs, despite their limited exposure to shadow banking-related risks. As a result, the framework may unduly restrict the availability of funding to counterparties whose classification as SBEs is driven by immaterial activities. This could, in turn, negatively affect credit provision to the real economy and limit financing opportunities for investment and growth.

In addition, a **potential requirement to introduce individual limits would make lending significantly more difficult in some areas, as shadow banking currently plays no or only a minor role in credit processes, partly due to the provisions in the risk strategy**. Individual risk limits are not defined separately but fall under the existing limits within the framework of the respective individual credit process. These must fall within the limit framework of the allocated (sub-)portfolio limits (portfolio guidelines, shadow banking).

At the level of individual institutions, existing processes already ensure that every counterparty seeking to enter into a transaction requiring approval is subject to an assessment and analysis appropriate to its profile, including factors such as sector, size and country of operation. On this basis, the transaction is either approved or rejected. Customer data and risk assessments are updated following the submission of new creditworthiness-related documentation, additional business requests or other relevant information. Credit business is therefore already subject to close monitoring, including by internal audit, external auditors and supervisory authorities, from the individual transaction level up to the strategic documents of the institution.

We therefore do not see any added value in imposing restrictions through hard limits. The introduction of specific individual limits for SBE would entail an additional layer of complexity with corresponding operational expenses, which we consider neither sensible nor necessary.

Furthermore, **a limit at the institution or group level could limit the lending capacity of the affected institutions within the EU and shift lending to countries outside the EU**. Precisely in view of the resulting competitive disadvantage compared to institutions outside the EU, a hard limit should therefore be avoided.