

EBA consultation paper on draft Guidelines on implicit support under Article 248(2) of Regulation (EU) No 575/2013

Public Hearing, 18 February 2016

Background

- Article 248 of Regulation (EU) No 575/2013 ('CRR') places restrictions on providing implicit support to securitisations. Originator institutions and sponsor institutions having failed to comply with the relevant requirements shall at a minimum hold own funds against all of the securitised exposures as if they had not been securitised.
- The same article states that a transaction shall not be considered to provide support if it is executed at arm's length conditions and taken into account in the assessment of significant risk transfer.
- Within this context, EBA is required pursuant to Article 248(2) CRR to issue guidelines on what constitutes arm's length conditions and when a transaction is not structured to provide support.

Scope of application and transactions not structured to provide support

- Implicit support should not cover support that institutions are already contractually obliged to provide. As such, the Guidelines apply to transactions an institution is under no contractual obligation to enter into at all or is not under a contractual obligation to enter into on the specific terms of such transaction.
- In the case of sponsor institutions, the Guidelines specify that a transaction is not structured to provide support if it is executed at arm's length conditions or on conditions which are more favourable to the sponsor institution than arm's length conditions.
- The test applied by the Guidelines to originator institutions is the same test as for sponsor institutions, subject to the additional requirement that, following the relevant transaction, the conditions for significant risk transfer continue to be met.

Arm's length conditions

- The draft guidelines propose an objective test for the definition of arm's length conditions.
- The proposed test states that a transaction should be deemed to be executed at arm's length conditions if the terms of the transaction are such as they would be:
 - in a normal commercial transaction;
 - if the parties had no relationship to each other (including, but not limited to, any special duty or obligation and any possibility to control or influence each other); and
 - each party:
 - ▶ acted independently;
 - ▶ entered into the transaction of its own volition;
 - ▶ acted in its own interests; and
 - ▶ did not take into account any extraneous considerations which are not directly connected with the transaction in question (such as reputational risk).
- In carrying out such assessment, institutions and competent authorities are directed to have due regard to the information available to each of the parties at the time when the transaction is entered into.

Notification and documentation requirements

- In order to avoid a scenario whereby support is provided on behalf of the originator by another entity, the Guidelines introduce notification requirements for transactions entered into by an entity (other than the originator institution) which is connected to the originator institution in a manner that might undermine the credit risk transfer and require competent authorities to assess the transaction as if it had been entered into by the originator institution.
- The Guidelines further specify the information to be provided when notifying transactions pursuant to the above-mentioned requirements or to Article 248 CRR, namely:
 - if the institution claims that the transaction does not constitute implicit support, adequate evidence showing that the relevant conditions are met; and
 - where the transaction is not entered into by the originator institution, details of the relationship between the originator institution and the relevant party or, as the case may be, of the support, instructions or transactions undertaken by the originator institution.

Significant risk transfer

- The Guidelines require competent authorities to assess whether the conditions for significant risk transfer continue to be met.
- Circumstances when a transaction would be deemed to invalidate the conditions for significant risk transfer include situations where:

- the credit risk of the originator institution after undertaking the transaction materially increases; or
- the capital or liquidity position of the originator institution is, directly or indirectly, materially affected by the transaction,

where, as a result of the transaction, the reduction in risk-weighted exposure amounts the originator institution initially achieved is no longer justified by a commensurate transfer of credit risk to third parties.

- All relevant factors should be considered when assessing whether the credit risk is materially increased, including changes in:
 - the market price of the securitisation positions;
 - the total risk weighted exposure amounts of the securitisation position holders; and
 - the securitisation position ratings.

Assessment factors

- Pursuant to Article 248(1) CRR, the institution shall, when assessing whether the transaction is not structured to provide support, adequately consider at least all of the following:
 - a. the price of the repurchase;
 - b. the institution's capital and liquidity position before and after repurchase;
 - c. the performance of the securitised exposures;
 - d. the performance of the securitisation positions; and
 - e. the impact of support on the losses expected to be incurred by the originator relative to investors.
- The Guidelines provide further guidance in respect of each such factor.

Questions for the public consultation

- Six questions were put forward in the consultation paper, as follows:
 - Do you have any general comments on the draft guidelines on implicit support under Article 248(2) of Regulation (EU) No 575/2013?
 - Do you have any comments on the proposed definition of transactions not structured to provide support?
 - Do you have any comments on the proposed definition of arm's length conditions?
 - Do you have any comments on the proposed guidance regarding the factors contemplated in points (a)-(e) of Article 248(1) of Regulation (EU) No 575/2013?
 - Is the arm's length condition in paragraph 10.a of the draft guidelines sufficient to test in all cases whether a sponsor provides support? If not, what would be an appropriate requirement? Please provide examples.
 - Should transactions undertaken by a third party other than the sponsor institution or originator institution be subject to the same assessment with regard to the provision of implicit support as transactions undertaken by the sponsor institution or by the originator institution or should they be subject to different assessment standards (and, if so, which standards)?

Any questions or comments?



EUROPEAN BANKING AUTHORITY

Floor 46, One Canada Square, London E14 5AA

Tel: +44 207 382 1776

Fax: +44 207 382 1771

E-mail: info@eba.europa.eu

<http://www.eba.europa.eu>