German Banking Industry Committee

Die Deutsche Kreditwirtschaft

Comments

on

EBA Consultation Paper 2016/19 - Authorisation of credit institutions

Register of Interest Representatives
Identification number in the register: 52646912360-95

Contact:
Felix Krohne
Adviser
Telephone: +49 30 1663 2190
Fax: +49 30 1663 2199
Email: felix.krohne@bdb.de

Berlin, 8 February 2017

The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the Savings Banks Finance Group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks.

Coordinator:
Association of German Banks
Burgstraße 28 | 10178 Berlin | Germany
Telephone: +49 30 1663-0
Telefax: +49 30 1663-1399
www.die-deutsche-kreditwirtschaft.de

Comments on EBA/CP/2016/19

Question 1: Do you have any general comments on the draft Regulatory Technical Standards under Article 8(2) of Directive 2013/36/EU or on the draft Implementing Technical Standards under Article 8(3) of Directive 2013/36/EU?

We should welcome it if national competent authorities were given more freedom. They should be allowed to act more flexibly. An NCA should, for example, be able to dispense with requesting data and documents if it already possesses this information or is of the opinion that it does not need this information to assess an application for authorisation. Otherwise a needless bureaucratic burden will be imposed not only on institutions but also on NCAs.

Question 2: Do you have any comments on the proposed list of information to be provided for the authorisation of credit institutions?

The list of information that an applicant credit institution is required to submit is too long and too detailed. As such, it is, in our view, simply an obstacle to the establishment of a bank without delivering any added value. Much of the information does not help to provide better protection. An application procedure already takes at least six months today. If the amount of information to be submitted increases, supervisors will either take even longer to decide on applications or inevitably have less time to carefully examine individual items of information. We believe that the size of the list should therefore be reconsidered. By way of example on a non-exhaustive basis, may we draw attention to the following required information:

If no person or other entity has a 10% holding in the credit institution, Article 6 requires the submission of information on the 20 largest shareholders. In the event of a widely dispersed ownership structure, a large amount of information would have to be submitted although the largest shareholders may hold only 4% of the shares. The burden this will impose does not appear justified compared to the limited influence such shareholders have.

According to Article 7 (1) (g), the applicant credit institution has to indicate the minimum time that will be devoted by members of the management body and supervisory body to performing their functions. This will certainly be difficult to estimate prior to the commencement of business activities and will vary from person to person (depending on previous experience, travel time, etc.). The added value of such uncertain information based merely on an estimate is unclear. We therefore request deletion of this point. Article 8 calls in connection with the "*programme of operations*" under point (i) for "*details of market research and competitor analysis and its outcome*". It is not clear what is meant by "*details*". It is equally unclear what relevance details of "*future promotion and marketing*" (point viii) have and whether they should be available on submission of an application for authorisation.

We also believe that it is wrong to impose a requirement on an applicant credit institution preparing to open for business to draft a recovery plan at this early stage. Such a credit institution is usually of a size that does not require a recovery plan. In addition, by submitting the required financial information, the credit institution demonstrates that it has a sustainable business plan for the coming years. The requirement under Article 9 to take a look at the future going beyond such information is inappropriate, in our view.

We believe that it is sufficient for a credit institution to provide a summary of its policies when submitting an application for authorisation. The policies called for in Articles 9 and 10 go too far, however. In our

view, there is no need at this stage to have, for example, a training policy for the staff or the like in order to assess an application for authorisation.

The term "key function holders" is not defined. This causes uncertainty among banks and other market participants. As obligations are tied to this term, it should be defined precisely.

Question 3: Do you have any comments on the proposed requirements applicable to shareholders and members with qualifying holdings of credit institutions?

Question 4: Do you have any comments on the proposed list of obstacles which may prevent the effective exercise of supervisory powers?

Question 5: Do you have any comments on the procedure set out in the draft Implementing Technical Standards?

Question 6: Do you have any comments on the draft application form for authorisation as a credit institution?

We recommend revising the design of the draft application form. Every single point should be numbered throughout to facilitate cross-reference between the points and annexes. This is not the case in, for example, section 4.4 on page 56. The introduction of checkboxes would also be conceivable to allow ticking whether annexes are attached, will follow later or whether they are irrelevant.

Question 7: Regarding the assessment of the credit institution's management, do you believe that, in addition to the members of the management body, information should be provided in respect of (i) the heads of internal control function and chief financial officer, (ii) generally in respect of members of senior management or (iii) in respect of another set of officers (if so, please specify which ones)?

We do not believe that, in addition to the members of the management body, information should have to be provided on other employees. While, when submitting an application for authorisation, the credit institution needs to know that it has to fill the positions of head of internal control and chief financial officer, there is no need for these positions to actually be filled at this stage. Filling these positions at the time an application is submitted although a decision takes at least six months would not make any economic sense, as no business can be conducted during this period.

Question 8: Do you believe that further flexibility along the lines of the sequencing process described in the explanatory box at the end of Article 11 should be provided for? If so, do you consider that the sequencing process as described is suitable or would you propose a different approach?

Efforts to facilitate market entry are, in principle, to be welcomed. As proposed, it should be ensured that any eased authorisation requirements are available to all applicants from the financial services sector. To ensure uniform regulation, the inclusion of fintechs through an authorisation generally makes sense. The sequencing discussed could make a valuable contribution towards facilitating such inclusion. However, we

believe that it would be wrong to tie eased authorisation requirements to terms such as 'fintechs' or 'start-ups'. For one thing, there are no clear-cut definitions and, for another, such eased authorisation requirements should not be tied to the type of credit institution but assessed from a business perspective (same business, same risk, same rules). Just as important, however, is ensuring an adequate level of protection for the clients involved. This is why restricting the size of an institution's business during the sequencing phase is essential. We believe that it also makes sense for the applicant to be required to submit a timetable. The aim should be to have a clearly specified framework for transition to a regular authorisation. We recommend setting a maximum time period within which the relevant information and documents should be submitted.

While we welcome the EBA's work on sequencing, we believe that it was right to shelve more detailed planning here, since there is no mandate for this in the Capital Requirements Directive. We regard this issue as so important that it should remain within the jurisdiction of the Level 1 legislator.