German Banking Industry Committee

Die Deutsche Kreditwirtschaft

Comments

Consultation paper 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 (EBA/CP/2026/06)

Lobby Register No R001459
EU Transparency Register No 52646912360-95

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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-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks.

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Comments EBA/CP/2026/06

General Remarks

We welcome that the Guidelines have been streamlined, in particular through the exclusive reference to the CRR and Delegated Regulation (EU) 2023/2779 and the avoidance of standalone definitions, which will help eliminate current overlaps and inconsistencies.

We are, however, critical of the removal of the materiality threshold of 0.25% of Tier 1 capital. This runs counter to the stated objective of simplifying the Guidelines. Neither Delegated Regulation (EU) 2023/2779 nor the amendments introduced by CRR 3 require this deletion. The threshold currently applies only within the scope of the Guidelines and does not affect the substantive provisions of the Delegated Regulation. Its removal would significantly increase the operational burden for institutions for the purposes of the EBA Guidelines – without any discernible benefit for risk-based supervision. We therefore advocate, on proportionality grounds, incorporating the threshold into the Delegated Regulation or the CRR, thereby extending its application beyond the Guidelines to shadow banking entities (SBEs) more generally. At a minimum, the threshold should be retained within the scope of the Guidelines (see Question 6 for further details).

Question 1 *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)?*

For the identification of SBEs, Delegated Regulation (EU) 2023/2779 provides detailed definitions and classification criteria, including a number of specific requirements and special cases. Many identification processes are already embedded in institutions' internal procedures and have proven effective in practice. Ultimately, the complexity of Delegated Regulation (EU) 2023/2779 reflects the fact that the term "shadow banking entity" covers a wide range of entities and activities.

At the same time, there are still some isolated challenges in identifying SBEs in the following areas.

1. There are difficulties in identifying SBEs in the case of institutions from jurisdictions for which no equivalence decision exists, but which are nonetheless authorised and supervised in line with the Basel Committee's Core Principles for Effective Banking Supervision. This is because Article 1(2)(f)(i) of Delegated Regulation (EU) 2023/2779 is not sufficiently clear with respect to such institutions. There is no clear guidance for institutions on how to determine whether a third-country supervisory authority authorises and supervises an entity in accordance with the Basel Core Principles (BCP), so that Article 1(2)(f)(i) can be considered fulfilled.

These principles cover a range of aspects; a third-country supervisory authority may apply some of them fully, others only partially, and may not apply some at all. FSAP assessment reports by the International Monetary Fund on compliance with the Basel Core Principles (BCP) are not published on a regular basis; some are several years old, and may not be available at all for certain jurisdictions. There is therefore no clear basis for determining which third-country supervisory authorities operate in line with the BCP.

We therefore consider compliance with the BCP to be an inappropriate criterion for excluding institutions in third countries without an equivalence decision from the SBE definition. A frequently observed outcome in practice is that such institutions are classified as SBEs across the board.

We therefore suggest that the EBA publish a list of jurisdictions in which institutions may be excluded from the SBE definition. Alternatively, there is an argument for excluding deposit-taking institutions globally from the SBE definition altogether.

In this context, we would like to point out that many institutions' exposures in jurisdictions outside the EU and not deemed equivalent are primarily related to trade finance, which facilitates global imports and exports as well as the associated payments. These exposures therefore support businesses and economies worldwide. Such exposures should not be constrained by the shadow banking framework, which was designed to address risks of a different nature.

2. There are also challenges in the classification of alternative investment funds (AIFs). Under Delegated Regulation (EU) 2023/2779, third-country AIFs subject to equivalent supervision are not considered SBEs, provided that they:

- are not permitted to grant loans,
- are not permitted to acquire credit exposures and
- are not leveraged by more than a factor of three.

In practice, however, we are not aware of any EU equivalence decisions regarding the supervision of AIFs in third countries. We therefore request clarification that equivalence of supervision for third-country AIFs is not an additional mandatory requirement for assessing the three criteria set out above. Rather, the assessment of whether third-country AIFs qualify as SBEs should be based solely on the three criteria outlined above, such that AIFs should not be classified as SBEs if those criteria are met, even in the absence of an EU equivalence decision.

Question 2 *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?*

We consider the framework set out in the current guidelines to be appropriate and workable. In practice, the implementation of both the principal and fallback approaches does not give rise to material difficulties. However, there are some operational challenges in specific areas (see Questions 1 and 3).

The principal and fallback approaches provide a proven and operationally efficient basis for limiting aggregate exposures to SBEs. Against this background, we clearly support maintaining both approaches in their current form.

Question 3 *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.*

There are particular challenges in obtaining sufficient data to apply the principal approach. This is especially the case for transactions involving underlying assets, as well as for exposures involving the substitution of collateral. In many cases, there are clear limitations in terms of data availability and transparency. In particular, the purpose and specific activities of certain entities are not always fully transparent. The main reasons for this include heterogeneous disclosure standards outside the CRR/CRD framework, limited public reporting, restricted access to sufficiently granular data for fund structures and special purpose vehicles and, in some cases, a lack of supervisory information in non-equivalent legal systems. As a result, risk assessments are sometimes based only on incomplete or qualitative information. These data limitations make it difficult to accurately assess key risk characteristics, such as leverage, liquidity profile, interconnectedness and portfolio quality. Particularly for smaller transactions, the necessary documentation is in some cases not available or is only available after some delay. To comply with the Guidelines, such cases must be treated more conservatively, requiring additional collateral or tighter limit restrictions, which reduces the scope for business activities. As a result, this can have a material impact on the choice of approach (principal or fallback), for both larger and smaller institutions. In the case of very small exposures, the cost–benefit balance also becomes a key consideration, which may ultimately lead to a classification as an SBE under a conservative (worst-case) approach.

At present, where exposures fall below the materiality threshold of 0.25% of Tier 1 capital, they are typically not considered, and a detailed assessment can be avoided. However, if the materiality threshold were to be removed, this would entail a significant additional operational burden for the purposes of complying with the EBA Guidelines (see also Question 6).

The materiality threshold is therefore essential and should be maintained. As with the fallback and principal approaches, it should continue to apply in its current form, ideally anchored in the Delegated Regulation or the CRR.

Question 4 *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 is subject to an overall portfolio limit of 25% of Tier 1 capital. This means that total exposures to SBEs, on an aggregate basis, must not exceed 25% of Tier 1 capital. The fallback approach therefore provides a conservative cap on portfolio risk from SBE exposures and appropriately reflects the supervisory intent.

Institutions with immaterial SBE portfolios frequently apply the fallback approach, as the significantly more stringent supervisory requirements for applying the principal approach are disproportionately high considering the low level of risk exposure, both on an individual and aggregate basis.

The fallback approach is also applied by institutions with larger SBE portfolios where certain information (e.g. on interconnectedness, volatility or evidence supporting the adequacy of the credit assessment, including compliance with the BCP) is not available – or cannot reasonably be obtained – or where exposures are very small. See also answers to Questions 3 and 6.

In line with the defined risk strategy, the fallback approach provides a pragmatic and operationally manageable way of limiting exposures to SBEs. At present, there is generally no need for additional clarification of the trigger conditions for the fallback approach.

Question 5 *Did your institution experience operational challenges in integrating the binding SBE definition of the Delegated Regulation (EU) 2023/2779 into your internal limit framework?*

The inclusion of the binding SBE definition set out in Delegated Regulation (EU) 2023/2779 has not given rise to material operational challenges. However, it should be noted that implementation is resource-intensive and requires significant personnel resources. For specific challenges, see Question 1.

Question 6 *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.*

The deletion of the previous materiality threshold of 0.25% of Tier 1 capital (formerly: eligible capital) would significantly increase the operational burden in complying with EBA/GL/2015/20. Individual institutions estimate that the number of entities to be assessed on a monthly basis could increase by a factor of up to 10. In that case, the assessment of whether an entity qualifies as an SBE would already be required when granting very small exposures, including overdrafts and credit card limits. However, such small exposures are not relevant from a risk perspective, including in the context of exposures from SBEs. In addition, obtaining the necessary information can involve considerable effort (see Questions 3 and 4). In particular, the volume of exposures to be identified and analysed would increase significantly, resulting in substantially higher time and resource requirements (personnel and IT). This would represent an additional burden that should be avoided from a proportionality perspective. In our view, the existing threshold makes a key contribution to a workable and risk-based implementation of the Guidelines.

In our view, the deletion of the immateriality threshold of 0.25% is neither mandated by the Commission Delegated Regulation (EU) 2023/2779 nor by the amendments introduced by CRR 3 with regards to shadow banking entities.

In the EBA’s Final report on Draft Regulatory Technical Standards on criteria for the identification of SBEs under Article 394(4) of Regulation (EU) No 575/2013 of 23 May 2022, the EBA explicitly stated that the materiality threshold will continue to apply for purposes of the Guidelines, see p. 51: “The threshold set out by the EBA guidelines (EBA/GL/2015/20) will continue to apply for the purpose of setting internal limits according to Article 395(2) of the CRR”.

There is no need to remove the materiality threshold, also given its link to supervisory reporting and disclosure. In our view, this would be the wrong approach. In future, all institutions would be required to report their total exposures to SBEs, even where those exposures are so small that institutions apply the fallback approach, in order to limit overall SBE risk within their internal risk management. Against this background, the EBA proposes removing the materiality threshold currently applicable under the Guidelines. Instead, this threshold should be retained and should also apply to reporting and disclosure, taking into account proportionality and materiality. Under Article 430(6) CRR, the EBA is granted discretion in specifying the new reporting requirement set out in Article 394(2), second subparagraph, CRR.

Taking into account efficiency and proportionality, as well as the stated objective – including on the part of supervisors – of reducing the regulatory burden, the materiality threshold should be incorporated into the Delegated Regulation or the CRR and thus apply more broadly to SBEs' exposures beyond the scope of the Guidelines. At a minimum, the threshold should be retained within the scope of the Guidelines.

Question 7 *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.*

Under the principal approach, an overall limit for total exposures from SBEs is set in relation to the institution's capital base. Independently of this, institutions also set limits on exposures to individual SBEs in accordance with the requirements of EBA/GL/2015/20. The total portfolio is thus limited in relation to the institution's capital base.

Under the fallback approach, a portfolio limit is set by supervisors in line with the applicable limits under the large exposures regime. This supervisory portfolio limit is capped at 25% of Tier 1 capital. As a rule, institutions set lower internal limits, taking into account buffers, in order – in line with their defined risk strategy – to be able to take measures at an early stage as exposures approach the supervisory limit. As part of an established process, utilisation is reviewed on a regular basis – in some cases in conjunction with an early warning traffic light system – alongside an annual review of the appropriateness of the limits set.

Question 8 *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?*

No answer provided

Question 9 *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 ex plain 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 requirement to introduce specific individual limits for SBEs would, in part, significantly complicate lending processes. This is partly because the topic of SBEs currently plays no or only a limited role in lending, including due to its treatment in the risk strategy. It is also because individual limits on SBE exposures are not set separately, and are covered by the existing limits within the respective credit process. These must fall within the framework of allocated (sub)portfolio limits. The processes applied by institutions provide that each client entering into a transaction requiring approval is subject to a review and analysis appropriate for that client (e.g. sector, size, jurisdiction). The outcome of this process is the approval or rejection of the transaction. Client data is updated and risk assessments – whether regular or event-driven – are carried out when new credit-relevant information becomes available, in the context of further business inquiries or upon receipt of other relevant information.

Credit business is already subject to intensive monitoring, ranging from the individual transaction level to the strategic level within institutions, including through internal audits, by external auditors and supervisors. We therefore see no added value in introducing supervisory or statutory limits specifically for SBEs. On the contrary, they would undermine the positive aspects for financial markets identified in the consultation paper. The introduction of specific individual limits for SBEs would therefore add an additional layer of complexity, with corresponding operational costs, which we consider neither appropriate nor necessary.

With regard to supervisory or statutory limits for SBEs, we expect that the introduction of specific individual or overall limits on exposures to SBEs would impair institutions' willingness or ability to engage in such activities, including lending, investment, intermediation or securities financing transactions. A fixed limit would not take into account institutions' individual ability to assess and mitigate risks arising from SBEs. We would also like to point out that there are differences between various types of SBEs – for example, a hedge fund is, under the European regulatory framework, clearly significantly riskier than a money market fund. These differences can be taken into account under an institution-specific approach. In addition, the introduction of specific individual limits could have a negative impact on market liquidity if institutions were to refrain from investing in exposures to certain SBEs, for example money market funds.

Supervisory or statutory limits at institution or group level could also restrict the ability of relevant institutions to provide credit within the EU and could lead to a shift of lending activities to jurisdictions outside the EU. In view of the resulting competitive disadvantage compared to institutions outside the EU, fixed limits should therefore be avoided.

Finally, we would like to point out that, due to specific requirements such as the substitution of collateral, the relevant limit could be fully exhausted where the collateral issuer is classified as an SBE. Apart from the resulting significant operational burden, this would be clearly disproportionate in view of the reduced risk. It could lead to higher costs and increased complexity without being justified from a risk perspective.

Additional aggregated limits are also not required, given the already conservative design of the fallback approach and the existence of a supervisory portfolio limit. From a supervisory perspective as well, the current framework is better suited to ensuring that institutions actively assess the risks arising from exposures to SBEs, rather than relying on a more mechanical allocation of exposures to a fixed overall limit.

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