



Draft ECB Guide on the approach for the recognition of institutional protection schemes (IPS) for prudential purposes

EACB Comment Paper (Transposed into ECB form)

Issue	Article	Comment (Amendment, Clarification, Deletion)	Concise Statement why your comment should be taken on board
General Comments		Clarification	While we appreciate the intention of the Draft Guide to maintain as much flexibility as possible, we nevertheless believe that the consultation document is too general and vague in many places; this makes it difficult in many instances to understand the core of the ECB's approach and how the SSM will apply many of the elements included.
General Comments -Nature of on IPS		Clarification	The draft guidance document aims to further clarify the prudential requirements under 113(7). Such a perspective, however, will only reveal a part of the system, i.e. certain elements and certain results. In particular, it always has to be considered that when an IPS is a mechanism with mutual obligations and benefits, no obligation, nor commitment of one side can be seen and treated without looking at the corresponding obligations of the other side. In our opinion the draft guide does not properly reflect the interconnectedness of rights and obligations of both sides (e.g. in the context of a commitment to provide support).
General Comments -importance of IPS	Introduction	Clarification	We regret that the Introduction does not mention the relevance and benefits of IPS for LSIs in the EU. As the ECB also pointed out in the presentation of the hearing, the wide majority of LSIs in the Eurozone adhere to an IPS (or wish to establish one or an even stronger form of cooperation). For LSIs, IPS are an essential tool to compete in a highly competitive environment. At the same time IPS contribute significantly to the stability of the banking sector. We would appreciate a reference to such function and beneficial role of IPSs.
General Comments-highly integrated IPS groups		Clarification	There are instances of mutual consolidated groups that fulfil criteria for IPS recognition albeit not having formal supervisory approval as such. For these "highly integrated IPS groups" there is no such specific prudential status. The prudential treatment of IPS networks should be allowed also for these "highly integrated IPS" mutual groups (e.g. with regard to capital relationship) in order to safeguard the level

			playing field and allowing to apply the consistent treatment to similar risk profiles.
General Comments-relationship DGSD		Clarification	Since Art. 113(7) CCR stipulates the conditions for the recognition of an IPS and Art. 4(2) of Directive 2014/49/EU determines the (additional) conditions for the recognition of an IPS as a DGS, it may be argued that from the perspective of a Guide on the approach to 113(7) no reference to the DGSD is necessary. However, there are aspects where the relationship between these two acts could be further clarified, e.g. regarding the necessity of only one fund , the target level of the fund, the minimum amount of fund available and stress testing.
General Comments-relationship TLAC		Clarification	Point 8(b) on page 13 of the FSB TLAC Term sheet finalised in November 2015 stipulates a highly relevant exception from the direct issue of TLAC for cooperative banks, indicating that "External TLAC must be issued and maintained directly by resolution entities subject to the following exceptions: [...] regulatory capital instruments issued by cooperative banks or financial institutions affiliated to them that have in place <u>an institutional protection scheme or other cooperative mutual solidarity system that protects the solvency and liquidity of the affiliated cooperative banks and institutions;</u> " While TLAC is not implemented into EU legislation yet, this principle should be addressed in the guide to avoid any inconsistency between prudential requirements and supervisory and resolution actions.
First assessment-nature of IPS	Pg. 2; Nr. 6	Clarification	<p>With its (not explicit) reference to Article 32(1)(b) BRRD the documents seems to set a kind of minimum requirement or last possible trigger point for the intervention of an IPS and the support it has to deliver at a minimum. However, most IPS will, on the basis of their tools and systems according to e.g. Article 113(7)(c),(d) take measures, i.e. take influence at a much earlier point than described in Article 32(1)(b) and to have an affiliated institution change its business/risk policy. This preventive element in an IPS is also in the best interest of all members of an IPS in order to keep costs low.</p> <p>Moreover, if financial intervention by the IPS really became necessary, it would most probably also be referenced as a recovery measure in the recovery plan of an institution, as would probably also other tools of the IPS.</p> <p>The wording of this paragraph could therefore create a wrong impression of the functioning of most IPS. It should therefore be clarified that intervention by the IPS may be part of an institution's recovery plan and that financial intervention by an IPS has, to be triggered at the latest where there is no more prospect for recovery.</p>
Individual waiver-single point of contact for every IPS member.	Pg. 2,4; Nr. 5 and 12		Even though this provisions does not apply to approved IPSs: possibly the drafting of the CRR requires the ECB to grant a waiver for every single member institution of an IPS and to treat and verify and request individually. However, such approach seems complicated, it would imply a multiplication of efforts, while not achieving a maximum of efficiency. The aim should be to simplify processes, especially for IPSs with hundreds of affiliated institutions, as well as to establish a direct link with the IPS itself. A single point of contact, as suggested in the hearing for the matters related to one IPS, seems highly desirable. In fact, affiliated institution would hardly be in a position to provide all the information and evidence required about the IPS.
Extent of IPS	Pg. 6	Amendment	Point (iii) indicates (inter alia) that "The IPS should not be allowed to refuse to provide support measures if that refusal would lead to the insolvency of one of its members. In addition, the IPS should

support			<p>ensure that its member institutions permanently abide by the regulatory own funds and liquidity requirements;" This interpretation of the wording is very strict and unconditional. In our view, it completely ignores the words "where necessary", which introduce in that specific context a notion of conditionality of the support.</p> <p>1. in our understanding the mandate to ensure solvency and liquidity under article 113(7) has to be understood, first of all, in a broader sense, i.e. as a synonyme for ensuring that affiliated institutions abide by the regulatory solvency and liquidity requirements. Thus it does not necessarily comprise financial measures. Instead, in the first place the affiliated banks have to take all efforts and deploy all possible means (hidden reserves, sale of assets, etc.)</p> <p>2. The commitment of the IPS cannot go beyond the funds available, including a limited amount of further financial commitments. Too far-reaching support measures could jeopardize the financial stability of other members and bring them in need of support. Thus, there must be some inherent limits to the support (see also Art. 10(8) of the DGSD) For the sake of consistency at point (iii), it should be clarified that a member of an IPS should have an obligation to provide support to another member in order to prevent the latter to become insolvent or illiquid, only to the extent that this support will not threaten its own obligation to comply with the prudential requirements applicable to it.</p> <p>3. Only angels help without conditions: As mentioned earlier, we believe that the current wording does not sufficiently reflect that an IPS is a system of mutual commitments and obligations: While the IPS may certainly not refuse its support simply due to the unsatisfying solvency and liquidity situation of an affiliated institution, it must nevertheless be possible to impose conditions such as the respect of certain recovery and restructuring measures, etc. and demand the respect of these as well as other conditions. Unconditional support would foster moral hazard and abuse on one side and reduce the influence of the IPS on an institution in a phase where strong influence is required. The suggested wording ignores that an IPS is a contractual system of corresponding rights, commitments and obligations and that, if one party does not meet its obligations, the other party is not necessarily obliged to fulfill its obligations either: In that situation, support would not be "necessary" (in the terms of the draft GL). For good reasons Article 113(7)(b) also refers to "the support <i>necessary under its commitment</i>", and thus makes a reference to the substance of the commitment.</p>
Stress tests	Pg. 6	Clarification	<p>(iv) stress tests at regular intervals: According to Article 4(10) of Directive 2014/49/EU DGS, also DGS/IPS have to perform annual stress tests. According to the relevant EBA (draft) GL for stress tests of DGS the stress test scenarios for DGS/IPS also comprise "the use of financial means to prevent the failure of a credit institution" (see 6.1. of draft GL, pg. 16s.) This draft guide should clarify that those stress tests are sufficient for the purpose of point (iv) mentioned above.</p>
Ex-ante fund	Pg. 6	Clarification	<p>The guidelines should clarify that for a DGS that is also an IPS the DGS funds and the IPS funds are the same: measures ensuring solvency and liquidity under 113(7) are equally "alternative measures" under Art. 11(3) DGSD: one measure achieves two purposes. Moreover, this seems clearly stipulated by recital 12, 17, and Art. 1(2)(c),2(2) and 4(2) of the DGSD (Directive 2014/49/EU).</p>

Contributions to DGS fund		Clarification	An additional clarification could be introduced that, in general, the membership of an IPS (that is not also a DGS) is to be reflected in lower contributions to DGSs, due to the risk mitigating role of the IPS, as recognised, inter alia, in Art 13(1) DGSD and para. 70 and 71 of the EBA GL on calculation of contributions to DGS (EBA/GL/2015/10).
Risk-absorbing capacity	Pg. 6	Clarification	vi: the risk-absorbing capacity of an IPS is not only consisting of paid-up funds and ex-post contributions; Art. 10(3) of the DGSD also refer to payment commitments and there are also other ways of financial support (e.g. guarantees)
Minimum target amount	Pg. 6	Clarification	(vi)((c): We have doubts about severe stress tests. It is necessary to clarify that the minimum target amount of the ex-ante available funds is quantified based on a medium or severe stress test. Severe stress tests are based on more unlikely scenarios compared to the underlying scenarios for medium stress tests. The “heavier” the stress test, the more unlikely is the occurrence of the base scenario in reality. It is not advisable to require obligatory, yearly, costly severe stress tests on the basis of scenarios that will not materialise in reality. In the event of an emergency case an IPS with sound financial means has the power for support measures on the basis of appropriate contingency plans. Moreover, it has to be reflected that affiliated institutions have their own ways and resources to fill or at least reduce gaps resulting from stress tests; any duplications or multiplying effects in the calculation of the target amount should therefore be avoided
Funds readily available / risk-absorbing capacity	Pg. 6	Amendment	The requirements under (vi) for ex-ante funds (readily available) seems overly strict. In particular, they could exclude that funds are held within a consolidated entity. This would not be in line with the wording of 113(7). The relationship between (vi) (c) (minimum target amount) and (d) (floor, minimum amount) and in particular their consequences for the recognition of an IPS are not evident. These terms have also to be brought in line with the (v), the risk-absorbing capacity of an IPS. These different terms and their relationship may require further explanation
Floor/minimum amount	Pg. 6	Clarification	As mentioned earlier, we believe that the risk-absorbing capacity of an IPS not only consists of paid-up funds (and ex-post contributions), but may also comprise payment commitments (guarantees) by members. Especially for newly established contractual IPS such commitments could play a role and should therefore be mentioned explicitly in this context. Moreover, Art. 11(5) of the DGSD already provides for a floor in a DGS/IPS.
Data flow and IT	Pg. 7	Amendment	113(7)(c) (ii) provides that: “appropriate data flows and IT systems are in place;” this aspect needs to be clarified in terms of practical expectations of the supervisor (e.g. integrated IT, full access to reporting data etc.); data flows and systems should simply correspond to the data to be submitted under (i), thus possibly “appropriate” should be replaced by “corresponding appropriate” We therefore assume that for the fulfilment of this requirement already existing IT-systems and data flows can be adequate and that there are not expectations that only newly-established, sophisticated IT systems and overarching data banks and data flows can guarantee the frictionless functioning of an

			IPS. Years of experience with well-implemented IT systems and smoothly running data flows show that also other well-developed solutions guarantee appropriate data flows and IT systems for the smooth functioning of an IPS.
Uniform standards/common definitions	Pg. 8	Amendment	113(7)(c) (iii),(iv); from the IPS perspective it is essential to properly classify the adhering institution and to have an overview on its risk situation; that does not necessarily imply that it has to have a detailed overview on all of its data; but rather a good overview on banks; moreover, any approach would have to reflect proportionality and the fact that there may be very relevant differences in size and business model between the smallest local bank and the central institution; from our point of view the emphasis should rather be on consistency
Sector assessment	Pg. 7	Clarification	113(7)(d) (i) requires that "the IPS assesses at regular intervals the risks and vulnerabilities of the sector to which its member institutions belong; (ii) the results of the risk reviews as performed by the main body responsible for the management of the IPS are summarised in a report or other document and are distributed to the members of the IPS shortly after they have been finalised;" It is quite unclear what kind of risk report is intended and to what extent/level of granularity the sector assessment is to be performed.
Risk review	Pg. 7	Clarification	113(7)(d)(ii): it seems to be inappropriate to send in fact the fully detailed results of a risk review to all members of the IPS; this may be even counterproductive and confuse members; rather they should get a not overly detailed summary that allows them to identify certain trends and necessities, so that they can draw conclusions for their own business;
Homogeneity of business criterion	Pg. 9	Amendment	<p>113 (7)(iv) indicates that "When assessing the homogeneity of business profiles the ECB will consider the extent to which the business activities of the IPS members are related to the IPS network (products and services provided to local banks, services to shared customers, capital market activities etc.)." The extent of the homogeneity criteria, as well as the degree of homogeneity to be achieved remain unclear. This should not lead to undue restrictions for IPS membership or uncertainty for the adhering institutions. The impact of a "non-homogeneity" finding could have severe consequences for the institution concerned.</p> <p>According Art. 113(7)(h)(iv) IPS networks are based on a division of tasks and collaboration of the entities, meaning that central institutions and other specialised institutions in the network offer products and services to other IPS members. When assessing the homogeneity of business profiles the ECB will consider the extent to which the business activities of the IPS members are related to the IPS network (products and services provided to local banks, services to shared customers, capital market activities etc.).</p> <p>In our view there are no quantitative measures and/or thresholds for the qualification of homogeneous business models. IPS networks and groups may include different activities and sizes. What matters is "the common link in the network of the bank," the existence of services for members IPS "and the cooperation within the IPS network." This may therefore include banks with BFI in a retail banking network if the BFI entity contributes to the functioning of the network (funding).</p>

		<p>Central institutions carry out banking activities in their own right, accessing to capital markets and performing liquidity and funding management in addition to offering products and services to other IPS members .</p> <p>Moreover there may be cases, for instance, where organizational choices have lead to the establishment of subsidiaries to perform specific activities for reasons of economies of scale (e.g. products for structured finance), this sort of “outsourcing” should not prevent institutions to be included in the scope of an IPS. While already addressed, this could be more explicitly reflected in point (iv) pg. 9 of the draft Guide.</p> <p>Finally, we would like to stress that the assignment of any steering or monitoring function in an IPS to an institution (e.g. a central institution), which also carries out banking transactions, would not affect homogeneity.</p>
Reassessment of IPS	Answer to question 3 – Page 2 (Q & A document)	<p>Answer to question 3 in the ECB Q&A document, indicates that in the event of “structural changes” to an IPS or incidents that may give rise to doubts regarding its compliance with the CRR conditions, a reassessment can be considered. This raises the prominent question on how significant and substantial such structural changes must be to justify a reassessment of an existing Institutional Protection Scheme. This element of uncertainty needs to be clarified.</p> <p>A reassessment due to structural changes to an IPS should only be considered by the ECB if an IPS is affected in its basic principles and shaken to its foundations. E.g. the change in the membership of the IPS should not be seen as structural change and therefore trigger a reassessment.</p>