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EACB comments on EBA draft GL specifying the criteria to assess the exceptional cases when institutions exceed the large exposure limits of Article 395(1) CRR and the time and measures to return to compliance pursuant to Article 396(3) CRR (EBA/DP/2021/03)

General comments

The EACB welcomes the opportunity to comment on the draft EBA GL on the criteria to assess the exceptional cases when institutions exceed the large exposure limits of Article 395(1) CRR and the time and measures to return to compliance pursuant to Article 396(3) CRR.

At a general level, we appreciate the fact that EBA's approach very much built on existing supervisory practices that are known and clear to institutions.

In terms of criteria to assess a breach as exceptional (frequency and number of breaches, the predictability of the breach and the presence of reasons beyond the control of the institution) these seem comprehensive and understandable.

Regarding the additional information to be provided where the competent authority is not satisfied with the detail of the information submitted (para. 26), we believe that the wording could be clarified to illustrate a need for further details on the elements listed in para. 25 rather than adding potential new items.

We appreciate that, for return to compliance, while a general three months' timeline is indicated, room is also left to the competent authority to decide on an adequate timing. In this regard it is essential to retain the approach providing that when an institution is not allowed more than three months to restore compliance with the large exposure limits, it might present a streamlined version of the compliance plan.

Paragraph 30 of the Guidelines describes, inter alia, the situation where a breach of the large exposure limits for more than one year would be warranted. We support the possibility introduced in said para. 30 of the GL allowing for return to compliance over periods longer than one year in certain cases. At the same time, we do not see the legal basis or justification for a distinction of breaches shorter or longer than one year. Instead, we would recommend an approach where a breach that continuously seems irresolvable should be monitored and reasoned more deeply as part of supervisory dialogue, therefore no additional specifications would be needed. It is extremely important for safeguarding financial stability that the necessary flexibility is embedded in these rules, in order to handle extraordinary situations such as systemic crisis or general market failures, for example due to severe shocks to the economy like a pandemic crisis. This should not be compromised by an arbitrary time limit, i.e. one year, imposed as a general principle.

Beside the elements outlined above, we believe that the current draft is overall fit for purpose and could be finalized in its form for an application as of Q2 2022.

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