

Bundesanstalt für
Finanzdienstleistungsaufsicht
Bereich Bankenaufsicht
Postfach 1308

53003 Bonn

31. July 2003

Dear Sir,

Comments on the 3rd consultative paper on the new Basel Capital Accord
- Reference Number: I 5 – J 112 – 1/2002 -

We would like to thank you for your letter of 29 April 2003 and we are delighted to comment on the 3rd consultative paper. In principle, we appreciate the improvements which have been achieved after the 2nd consultative paper.

In Germany, guarantee banks are institutions of self help of the economy itself and they are borne by the Chambers of Industry and Commerce, by the Chambers of Crafts, by trade associations and by associations on Liberal Professions as well as by credit institutions and insurance companies. They are incorporated in the promotional policy of the federal State ("Bund") and the regional states ("Länder") and they are supported by counter guarantees. In this respect, the guarantee banks characterise themselves as promotional banks and insofar they are not primarily subject to the idea of the private economy to make profit. The aim of this promotional policy consists in balancing the disadvantages of small and medium-sized enterprises which those companies face with regards to loan finance and equity finance in comparison with large companies.

As a matter of principle, the question of collateral will play an even more important role with respect to future capital requirements. In particular, small and medium-sized enterprises and start-ups, which dispose of promising projects, nevertheless will continue to suffer from a lack of collateral. This is the reason why in the future appropriate loan finance and equity finance for the small and medium-sized enterprise sector can only be ensured if the framework conditions will be designed in such a manner that higher importance can be attached to guarantees.

Legal definition of guarantees

The third consultative paper does not yet take into account – especially in paragraphs 111 and 160 – the peculiar legal definition of guarantees according to the German legal system. Guarantees given by guarantee banks are neither “irrevocable” nor “unconditional”. The possibility to cancel is legally permitted, but this does not curtail the value of the guarantee given that, normally, it is possible to pursue the guarantee bank. Guarantees are not “unconditional” since they are bound to precise terms of contract, which though are known by the contracting parties. However, for credit institutions (“Hausbanken”) guarantees given by guarantee banks constitute a clearly calculable collateral, which, after the determination of the default, are paid out very quickly, at the latest after one year.

We consider it necessary that the wording in the third consultative paper accounts also for the legal construction of bank guarantees in Germany in order that this risk mitigating collateral can be recognised by the calculation of the equity capital of the “Hausbank”.

Permanent Partial Use

If credit institutions granting the loan are applying the standardised approach they are able to weight guarantees in general with 20%. For this reason, the characteristic of conserving capital remains rightly maintained. The solidity of the guarantee banks including the state counter guarantees amounting to 65% in the “old Bundesländer” and amounting to 80% in the “new Bundesländer” justify this grading.

But, as matters stand in the third consultative paper this opportunity is not provided for in case of application of the IRB-approach. But due to factual reasons we regard it as necessary that this option will also be given in the inter banking sector. The internal rating of guarantee banks made by credit institutions granting the loan (“Hausbanken”) can lead to distortions as to the results of the rating due to the promotional mission of guarantee banks and due to the fact that they are not profit-oriented. In addition, the share of the counter guarantee of the “Bund” and of the “Länder” comprised in the guarantees would have to be rated as collateral, in principle, with zero, since according to general rules receivables against the German Federal Republic are without any risk.

0.2%-limit in the retail portfolio

We welcome that guarantees given to small and medium-sized enterprises with a value below one million Euro can be included in a retail portfolio and that this retail portfolio is subject to a lower weighting of 75%. But the limit that a single or several aggregated exposures per enterprise are not allowed to exceed 0.2% of the overall regulatory retail portfolio would considerably disadvantage smaller guarantee banks. Therefore, we plead for a non-application of this limitation on smaller institutions.

We would be very thankful if you could please be so kind and seize our suggestions so that they are taken into consideration in the final wording of the new Basel Capital Accord.

With best regards,
Federation of German Guarantee Banks ("Verband der Bürgschaftsbanken e. V.")

Dipl.-Volkswirt Stumpp
- Secretary-General -