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EBA letter on the Commission's proposal for the CRR/CRD review

Dear Mr Tajani

On 23 November 2016, a set of proposals to amend the rules on capital requirements was issued by the European Commission (*Proposals for a Regulation and a Directive of the European Parliament and of the Council amending Regulation (EU) No 575/2013 - CRR and Directive 2013/36/EU - CRD*) and the Council has been considering the proposals at its Council Expert Group since January.

The EBA has delivered stand-alone Opinions on some specific aspects of the proposals¹ of a more strategic nature. This letter is complementing those Opinions by conveying the views of the supervisory community on several other aspects of the proposals, which are mainly a follow-up on previous Advice delivered by the EBA. While the Advice of the EBA has been well reflected in the new proposals, this letter addresses specific comments in particular related to the Net Stable Funding Ratio (NSFR), the Leverage Ratio (LR) and Remuneration.

NSFR

With regard to the NSFR, we believe that overall the recommendations of the EBA calibration report on the NSFR delivered in December 2015 (EBA/Op/2015/22) are well reflected in the CRR2 proposals (EC 2016/0360 COD). The vast majority of the recommendations in the calibration report have been followed, in particular when it comes to definitions or conceptual approaches to follow, or regarding adaptation of the rules for some specific business models or EU specificities. A few deviations from the EBA advice concerning in particular the requirements for derivatives and reverse repos which have been eased somewhat compared to the global standards, although we could not identify EU specificities. We however note that they come with the introduction of a transitional period, pending a further review to be delivered in an EBA report and a subsequent delegated act from the European Commission (see paragraphs 4 to 7 of article 510 of the proposals). Such review clause seems very important given the deviation from global standards and the potential market sensitivity to changes on the other hand.

¹ EBA/Op/2017/02 on IFRS9 transitional arrangements, EBA/Op/2017/03 on improving the decision making for supervisory reporting

Besides, the scope of interdependent assets and liabilities has been expanded compared to the recommendations of the EBA calibration report. As originally indicated in the report, it would be desirable to introduce a mandate for the EBA to assess and monitor the assets and liabilities which can be qualified as interdependent as well as the products and services that would contingently benefit from this advantageous treatment. The expansion of the scope creates a greater potential for arbitrage or unjustified use which could adversely affect the liquidity of some segments of banking activities. Such risk could be appropriately contained by introducing a monitoring mandate for the EBA.

Article 428f CRR (revisions suggested)

1. Subject to prior approval of competent authorities who shall consult the EBA in advance, an institution may consider that an asset and a liability are interdependent, provided that all of the following conditions are fulfilled:

(...)

3. EBA shall monitor the assets and liabilities as well as the products and services benefiting from the treatment of interdependent assets and liabilities under paragraphs 1 and 2 of this Article to determine whether and how the conditions for eligibility are fulfilled. EBA shall report on the result of this monitoring to the Commission and advise if it considers that changes in the conditions listed in paragraph 1 or in the list of products and services in paragraph 2 are required.

Leverage Ratio

The EBA recommendations expressed in the leverage ratio calibration report (EBA-Op-2016-013) with regard to the calculation of numerator (Tier 1 capital) and denominator are generally reflected in the proposals.

Nevertheless, one area of concern is the broadly defined exclusion from the denominator of the ratio of public sector lending by public development credit institutions and pass-through loans. While a preferential treatment is well understood to facilitate the implementation of public policies, the proposed definition of a public development credit institution is wide and loose, potentially prone to arbitrage and circumvention of the rules. Hence, in order to achieve the very objective of such exemptions, the proposed prudential framework would need to be clear in scope and monitored in its application. In the same vein it is not obvious which type of institutions would be the originators of promotional loans and which types of promotional loans schemes would qualify for the exclusion of pass-through promotional loans.

It is suggested to include a mandate for the EBA to further specify the rules applicable to the exemptions for public lending by public development credit institutions as well as the criteria under which the exposures would qualify for the exemption relating to pass-through promotional loans. More generally, it is suggested to give a monitoring role to the EBA on both of these

specific exemptions, in order to ensure that the scope of these exemptions remains under control.

Article 429a CRR *(revisions suggested)*

1. *By way of derogation from point (a) of Article 429(4), an institution may exclude any of the following exposures from its exposure measure:*

(...)

3. *Institutions shall not apply the treatment set out in points (g) and (h) of paragraph 1, where the condition in the last subparagraph of Article 429(5) is not met. (...)*

4. EBA shall develop draft regulatory technical standards to specify further:

i) the meaning of ‘public development credit institution’ as referred to in point (d) of paragraph 1 and conditions in paragraph 2; and

ii) the conditions under which exposures may be excluded in accordance with point (e) of paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by [2 years after entry into force?].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

5. EBA shall monitor the application of Article 429a(1)(d), (e) and (2) and the range of practices across the Union. EBA shall report on the result of this monitoring to the Commission and advise if it considers that changes in the conditions listed in paragraph 2 are required.

Remuneration

The proposed amendments from the Commission reflect the views expressed by the EBA on remuneration and proportionality issues.

On a specific aspect, there would be merit in mandating the EBA to develop implementing technical standards on reporting for the purpose of the regular remuneration data collections included in the CRD, in particular for data on high earners. There would not be extra burden for institutions as these data are already required by the CRR but this would ensure a harmonised and secured way of collecting and processing them at EU level for aggregate publication. Such ITS solution for the purpose of good stable legal ground in this collection does not preclude the implementation of the “reporting decision” which the EBA could be empowered with.

Article 75 CRD

Proposal

...

3. ~~Competent authorities shall collect~~ **Institutions shall report to competent authorities** information on the number of natural persons per institution that are remunerated EUR 1 million or more per financial year, in pay brackets of EUR 1 million, including their job responsibilities, the business area involved and the main elements of salary, bonus, long-term award and pension contribution. ~~That information shall be forwarded~~ **Competent authorities shall forward that information** to EBA, which shall publish it on an aggregate home Member State basis in a common reporting format.

4. EBA shall develop draft implementing technical standards to specify the uniform formats, frequencies, dates of reporting, definitions and the IT solutions to be applied in the Union for the reporting of the information referred to in paragraph 3.

We welcome further exchange of views and remain at your disposal for any clarification you would seek for. We have also sent this letter to the EU Council Presidency and the European Commission. The letter will also be published on the EBA website.

Yours sincerely

[signed]

Andrea Enria