W1243AEW

Brussels, 5 August 2013

Set up in 1960, the European Banking Federation (EBF) is the voice of the European banking sector (European Union & European Free Trade Association countries). The EBF represents the interests of some 4,500 European banks: large and small, wholesale and retail, local and cross-border financial institutions.
The EBF is committed to supporting EU policies to promote the single market in financial services, in general, and in banking activities, in particular. It advocates free and fair competition in the EU and world markets and supports the banks' efforts to increase their efficiency and competitiveness.

Subject: EBF response to the EBA consultation on joint decision on institution-specific prudential requirements (EBA/CP/2013/10)

General remarks

The EBF has long been participating in the debate on the supervisory review and evaluation process (SREP) that started with the implementation of the Basel II standards and has been developed in the EU banking system since.

The SREP is a central part in the supervisory process. It is the scene where the dialogue between banks and supervisors takes place and it ends up with a mostly qualitative assessment of the overall capital adequacy and liquidity of the institution. It is therefore important to round up the regulatory framework with a SREP process that meets the expectations of both supervisors and banks, the former seeking clarity for a well-informed assessment, the latter being able to conduct their internal processes as usual.

When the former CEBS guidelines on the joint assessment and the joint decision (GL39) were published, capital requirements were enacted in the form of an EU directive that had been transposed to Member States. It was therefore reasonable to allow for a certain degree of discretion in the supervisory assessment conducted within the scope of the second pillar. The GL39 were instrumental in bringing harmonisation to the supervisory process across the EU.

In turn, the new capital requirements regulation (CRR) and directive (CRD4) means a significant progress towards the single rulebook however national authorities still retain a considerable amount of discretion in certain areas, some of which are subject to the SREP.

a.i.s.b.l
56, avenue des Arts B-1000 Brussels
+32 (0)2 508 37 11 Phone
+32 (0)2 511 23 28 Fax
www.ebf-fbe.eu

We would like that the EBA takes into account several points. Some of them were already concerns in the former GL39 and other have become apparent as a result of the widened scope and the national discretions granted in CRR. We note that EBA consultation paper refers to the CRR and CRD4 version approved by the Parliament on 17 April. Our comments have been made in the light of the later version published in the Official Journal on 27 June 2013.

Contact person: Gonzalo Gasós, EBF Senior Policy Adviser (g.gasos@ebf-fbe.eu).

Specific points

1) Proportionality

As the regulatory framework has grown in terms of complexity and burden for supervised banks more attention should be put on safeguarding the principle of proportionality. Though the text proposed by the EBA acknowledges that the consolidating supervisor shall assess the relevance of the entities in accordance with the abovementioned principle, more emphasis could be placed by:

- Indicating that competent authorities at large (not only consolidating supervisors of cross-border groups) should consider the size and complexity of the bank when requesting input data for assessment purposes.
- Clarifying that the relevance referred to in point 4 of Article 6 should be assessed from the viewpoint of the whole banking group and not according to the relative size of the subsidiary in its country of origin. We would argue that the SREP belongs to the realm of micro-supervision which objective is to assess the capital adequacy of the individual banking group. Therefore it is the relative size of the subsidiary within the banking group that is relevant to the SREP assessment regardless of the country where it is domiciled.
- Requiring supervisors that information on the internal capital adequacy assessment process (ICAAP) should be requested generally at group level and whatsoever in the same format defined by the banking group in accordance with the home supervisor guidance.

2) Consolidating supervisor

In our view the draft regulation does not seem to confer a prominent role to the consolidating supervisor apart from the administrative coordination and aggregation of host supervisors' contributions. Moreover, the draft regulation suggests an overreliance on supervision at individual entity level to the detriment of a holistic group level approach.

In particular we deem that Article 3 rightly frames the involvement of competent authorities in the joint decision process led by the consolidating supervisor. In our opinion, that is fair and enough. Nonetheless, the provisions in Articles 15 and 18 leave the potential lack of supervisory consensus unresolved with banks bearing the costs of such a situation.

We would request that the supervisory community foresees a mechanism to resolve dissenting opinions before they are delivered to the supervised banks. For example, at least:

- By amending Article 15 of the proposed regulation regarding the process in relation to decisions taken in the absence of joint decision. It should envisage who will be given the power to decide on the capital adequacy of the banking group and its significant entities. The last say should lie on the consolidating supervisor.
- By amending Article 18 accordingly. The management of the bank should receive a single decision document. We fear that the proposed draft could give way to a fragmented application of the assessment leaving banks with the obligation to comply with and to deal with two different supervisory approaches. Banks would also have to take different remedial actions depending on the view of every supervisor.

That door should not be left open.

3) Direction of the supervisory process

As a matter of principle, the supervision of an international cross-border group should be performed following a top-down approach. We note that the proposed regulation has partially taken this view by introducing Article 4 about the planning of the joint decision process. However, the content of Article 4 is limited to the management of timetables. We would suggest that Article 4 is extended to other aspects of the SREP including:

- .
- The contents and interpretations of the requested reports including the ICAAP and liquidity scenarios.
- The final steps where the joint decision is taken.

The aim would be to promote a more pro-active role of the consolidating supervisor from the beginning of the SREP. Merely planning timetables does not seem ambitious. Its planning should dig deeper into the essence of the assessment process so that all supervisors in the college get involved from the early stages. Enhancing the content of the planning phase would help the consolidating supervisor and the EBA (in its role of observer in the college) to:

- Identify potential differences between supervisors at an early stage.
- Better understand the underlying problems.
- Sort out some of the differences in the meantime.
- Anticipate remedial actions for the remaining differences with more time than the regulatory timespan.

4) Macro-prudential oversight

The EBF is concerned with the degree of national flexibility granted in CRR as to the definition of macro-prudential oversight policies. We understand this is level 1 text therefore not in the

remit of the EBA. However, we would suggest that EBA further extends the requirements for information to the relevant competent authorities in Article 9(2)(f).

Besides information on the minimum prudential requirements applying to each entity pursuant to Article 87 of CRR or by virtue of the ESRB recommendations on intermediate objectives and instruments of macro-prudential policy (ESRB/2013/1), the Article 9(2) of the ITS should request relevant competent authorities to provide with information as to:

- The circumstances that led to such an enhanced requirement.
- The identified changes in the intensity of macro-prudential or systemic risk assessments.
- The reasons why those risks could not be addressed by means of other measures in CRR.
- The later recommendations and opinions issued by the ESRB, EBA or the Commission as to the adequacy, timeliness and duration of those measures.

In general, the information requested in Article 458 of CRR should be reflected in the contributions to the joint decision.

We would request that the conditions that need to be met for the relief of such an additional requirement should also be stated in the SREP. Extraordinary requirements should be temporary after all.

Finally, we are not certain whether the so-called 'designated authorities' (as per CRR denomination) that will be in charge of macro-prudential oversight at national level have been taken into account in the draft ITS. We wonder if the ITS term 'relevant competent authorities' would encompass the 'designated authorities' of CRR.

5) Transparency

We welcome the introduction of Article 13 on communication of the capital joint decision and the liquidity joint decision to the management body of the EU parent institution.

Nevertheless, more details on the components of such a communication would be appreciated. For instance, the supervisory templates contain information that would be useful for banks to better understand the arguments for the joint decision and the potential remedial actions that would need to be undertaken to overcome the problems found. Some supervisors may share all or part of this information with the supervised banks. To ensure a consistent level of disclosure from supervisors to banks across the EU, we would advise EBA to frame the content of that communication.

It would in any event be appropriate that Article 13 would confirm that the consolidating supervisor should inform the group of the full timetable of the joint decision process as soon as it has been agreed

---