

**Bank Regulation and Supervision**

17 December 2020 (virtual meeting)

**Opening Remarks**

COM opened the session by outlining the agenda for the meeting. COM stressed that it wanted to give members another opportunity to express their views on the topics discussed during the previous meeting of the group.

**Exchange of views on potential changes to the administrative sanctioning regime**

COM summarised the three issues that had already been presented in the previous session, namely 1) the expansion of the list of sanctionable breaches in Article 67 of Directive 2013/36/EU (the Capital Requirements Directive or CRD), 2) the clarification of the distinction between enforcement and sanctioning measures' and 3) the clarification of the definition of administrative penalties and annual net turnover.

On the issue of sanctionable breaches, members that expressed their opinion signalled support and referred to written comments that they had submitted. In one intervention it was highlighted that the wording "shall apply at least" should be retained in the list in order to avoid the impression that the list was exhaustive.

Concerning the issue of administrative penalties, one member informed that its constitutional framework did not allow for the use of such penalties as it mandated criminal sanctions and fines for CRD and CRR breaches. The member also referred to written comments that it had submitted.

With regards to the definition of turnover, a member expressed support for simplifications and clarifications. However, the member pointed out that, when doing so, one should be mindful of the historical reasons for the initial wording in the provisions.

**Exchange of views on potential changes in the supervisory powers**

COM summarised the list of powers that could be added to the CRD already presented during the previous session. The three items on the list referred to 1) the acquisition of qualifying holding by banks, 2) the material transfer of assets and liabilities, and 3) mergers and demergers. COM also outlined that the members' written comments that had been received were rather positive, while highlighting areas that required additional reflection. Some comments emphasised, for example, that the overburdening of competent authorities should be avoided. Some comments also highlighted that tacit approvals might be more burdensome for competent authorities and give rise to legal uncertainty. On the issue of thresholds, it was suggested that Article 89 of Regulation (EU) No 575/2013 would be more relevant than Article 22 of the CRD. COM also reported that many delegations mentioned

that they needed more time as well as further details on the processes and criteria that relate to application of supervisory powers.

Member interventions were few and broadly supportive. Members stated that they would need more time to review some of the issues and would come back later in writing. On the issue of mergers and demergers, one intervention raised the question of whether the proposed changes would interfere with EU company law. COM responded that the focus on the prudential aspects of mergers would be distinct from the issues covered in company law. Nevertheless, COM indicated it would look into the matter. COM concluded this part of the session by inviting members to share further comments on technical points in writing.

### **Exchange of views on the implementation of the final Basel III standards as part of the upcoming banking package**

COM started by explaining that the output floor (OF) was one of the key measures of the final Basel III standards and that its aim was to reduce the excessive variability of risk weighted assets (RWAs) and thereby to increase the comparability of risk based capital ratios. COM presented the different approaches that have been proposed by stakeholders to implement the OF in the EU and were examined in a note that was sent to the members. The approaches were separated into 1) the single stack approach, where floored RWAs form the basis for calculating capital requirements, and 2) parallel stacks approaches, where some requirements would be (partly or fully) excluded from the calculation of the OF.

Following the introduction by COM, the EBA presented the results from an updated impact study that examined three different scenarios for implementing the OF and two scenarios concerning the overall implementation of the final Basel III standards, thus resulting in six possible options. EBA maintained that the updated impact study did not include new policy recommendations: the ones contained in the first study that was published in December 2019 remained applicable. In addition, the EBA pointed out that the updated study did not involve new data collection but leveraged existing data sources. The EBA stressed that although the use of existing data sources reduced the representativeness of the sample when compared to the previous study, the updated estimates would provide still a (sufficiently) representative picture.

The EBA outlined that minimum capital requirements would increase by a smaller amount than estimated in the first study. However, the OF would remain the main driver of such increases. The EBA further explained that the impact of those changes would be borne by large institutions (in particular by global systemically important institutions), whereas medium and small institutions would be less affected.

The EBA concluded by advocating against the use of the parallel stacks approaches. In the EBA's view it would go against the purposes of the OF as agreed by the Basel Committee, diminish the credibility of EU policymakers and lead to unnecessary complexity. The EBA

also highlighted that the review of the Internal Ratings Based (IRB) approach would also lead to increases in capital requirements thus limiting the impact of the OF. Moreover, it highlighted that the impact of the OF could also be contained by avoiding double counting of risk under Pillar 2.

The intervention from the EBA was followed by comments from the ECB. Overall, the ECB expressed similar views to those of the EBA. The ECB was of the opinion that the Covid-19 pandemic had shown the need for long-term reforms to enhance the structural resilience of the banking sector, and hence stressed the relevance of implementing the final Basel III standards. Concerning the OF, the ECB expressed support for a single stack approach and explained that supervisors were already required to avoid double-counting risks. Furthermore, the ECB voiced its opposition to parallel stack approaches because they would allow for offsetting, introduce complexity and prevent supervisors from mitigating bank specific risks. As to the level of application, the ECB supported the application of the OF at consolidated level.

Following the inputs from the EBA and ECB a total of 23 members expressed their opinions on the choice between the various approaches as well as on the preferred level of application of the OF.

On the issue of the approach to implement the OF, members' opinions were divided. While the majority of members favoured a single stack approach, a minority advocated for the implementation of the parallel stacks approach. The members supporting the single stack approach broadly echoed the assessments from the EBA and the ECB. Accordingly, they emphasised that this option would be better equipped to achieve the aims of the Basel framework, namely the reduction of undue variability and aggressive modelling and the increase of comparability of risk based capital ratios. Moreover, they were of the view that the single stack approaches were simpler, more transparent and did not pose the risk of introducing additional complexity. They also highlighted that double counting should be avoided. Most members that supported a single stack approach favoured the most conservative option or the option that would explicitly avoid double-counting of risks.

Members expressing support for the parallel stacks approach highlighted that a single stack approach would significantly increase capital requirements. They were of the view that such outcome would go against the political agreement, and hence that an alternative option for implementing the OF was needed. They also highlighted that in their view the parallel stacks approach was compliant with the Basel framework. They stressed that the approach would be better aligned with the objective of maintaining risk sensitivity in capital requirements. Furthermore, they considered that the double counting issues could be addressed through a parallel stacks approach. Finally, they viewed the approach as better equipped to take into account European specificities. In terms of the options outlined in the note, the supporters of the parallel stacks approach saw option 2.2. as the preferred one.

Concerning the level of application, most members expressed their support for the application at all levels. Members argued that this would ensure consistency with the existing legal framework. In addition, they were of the view that deviating from that approach would reopen home-host discussions. In this context, some members expressed the view that the level of application question was the more relevant issue from their perspective compared to the single vs parallel stacks approach question.

Members also touched on some additional themes during the discussion as it was highlighted that the OF issue should be seen as part of a package. Among the other issues that were raised were the Internal Loss Multiplier (ILM), the harmonisation of supervisory practices concerning internal models and the need to consider different impacts on Member States as well as the need to pay attention to the specificities of business models. Some members also stated that they required more time for in-depth analysis and would come back with detailed comments at a later stage.

Following the interventions from the members, COM summarised the discussion by pointing out that the demands for remaining faithful to the Basel standards, on the one hand, and avoiding significant impacts on capital requirements, on the other hand, would have to be brought together. In this context, the question how to define “significant” was also raised.

Before the end of the session, members and the EBA discussed the findings and sampling of the impact study in some more detail. One member expressed doubts on the representativeness of the study given its limited coverage. The EBA, in turn, highlighted one particular result, which found that the OF acted in a countercyclical manner.

### **Closing remarks**

COM concluded the meeting by thanking members for their contributions.