Comments

EBA discussion paper on proportionality assessment methodology (EBA/DP/2021/03)

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General comments

We welcome the approach for developing a framework for the consistent assessment of proportionality measures. Proportionate treatment that reflects the size and risk appetite of an institution is necessary for strengthening a level playing field (see also paragraph 57).

Any results should also be reflected in the further development of the CRR framework. This would take into account the results and objectives of the EBA's cost of compliance study and achieve a reduction in costs, especially for smaller institutions with a manageable risk model (see paragraph 2).

1. Do you agree with the two steps that proportionality assessment addresses?

We believe that this phased approach is generally suitable. However, the procedure in step 2 is not clear. In our view, the proposals on the metrics are not yet fully developed (see also our comment on question 6). It is not sufficiently clear how – without concrete benchmarks – the decisions of a policy expert can be better supported on this basis.

2. Do you agree with Classification I to be used for proportionality assessment? Given that quantitative thresholds are also being used for the classification of credit institutions, the EBA would welcome suggestions for the regular recalibration of these thresholds, in view to maintain the sample size and composition relatively stable over time.

We welcome the fact that the EBA is placing greater emphasis on the issue of "proportionality in regulation" by means of the discussion paper and that this will also provide guidance for greater proportionality in future regulatory projects.

However, the proposed classifications (I – IV) are based to a very large extent on existing classifications (some of which are already being used). Although we welcome the establishment of the "other institutions" category as a simple residual category of the CRR2 definitions, it nevertheless consists of a range of EUR 25 billion total assets and thus possesses little in the way of selectivity.

This means that sufficiently fine granularity has still not been created and the discussion paper does not contain any concrete proposals in this regard. Additionally, it is not sufficiently clear how the interaction of the various classifications (quantitative and qualitative) can be implemented in practice.

3. Do you agree with Classification II to be used for proportionality assessment? Do you consider the broad business model categories as adequately representative for proportionality assessment?

We agree in principle with the classification, especially with regard to the classification of small banks (cooperative, savings and private banks). These banks are by their nature local, rather small banks with a low risk profile and a focus on core banking business (savings and loans, see also Table 3).

It is our understanding that investment firms that do not conduct the deposit business and qualify as credit institutions within the meaning of the CRR (point 1b)ii) and iii) of Article 4(1) of the CRR) solely on the basis of their membership of a group, and whose transactions are also conducted solely for hedging purposes in line with Annex I section A no. 3 of MiFID II, cannot be clearly assigned to one of the proposed categories. Classification as "other specialised credit institutions" within the group of

"specialised banks" would not be appropriate, in particular because of the low-risk business activities (e.g. securities settlement, currency exchange). We therefore advocate classifying and capturing these institutions separately in Classification II.
In addition, due to the new importance of membership of a group in the definition of credit institutions, the relationship between the qualification of business models at group and individual institution level should be clarified.

4. Do you agree with Classification III that integrates CRR2 classification of credit institutions?

We generally agree to the extent that Classification III results may be used to compare quantitative assessments. It might enable the supervisors to develop an overview and a better understanding of how proportionality is currently implemented by CRR2 and how much is actually needed when taking into account the results of Classifications I and II.

In this context, however, we would like point out that Classification III has significant disadvantages compared with Classifications I and II. Institutions that will be subject to the strictest regulation will be defined using a size criterion (EUR 30 billion total assets; paragraph 31 d. of the EBA discussion paper). A definition based on total assets would run counter to the fundamental concept of sufficiently differentiated regulation on the basis of the proportionality principle. In its report on the CRR amendment, the European Parliament also drew attention at the time to the fact that the size of an institution alone is not decisive for an institution's risk profile.

The rigid limits used in the CRR have proven to be problematic in practice, as only the scope of the business volume is taken into account, while aspects that are particularly relevant for the risk situation, such as the complexity and internationality of the business model or the interconnectedness of the institution, are ignored.

By contrast, the definition of systemically important institutions in line with the Basel Committee principles is based at least on four principal factors. In addition to size, these include the interconnectedness of the institution or group, substitutability and complexity. In its corresponding guidelines (EBA/GL/2014/10), the EBA adopted these principal factors and operationalised them using 10 differentiated indicators. National competent authorities are free to use additional indicators for assessing systemic importance. For example, the German supervisory authority currently uses 17 different indicators to model the risk profile of the institutions. Total assets is only one of the relevant indicators.

As a result, the definition of institutions associated with Classification III is insufficiently selective for the purposes of the proportionality principle. It could make sense to build on existing systems such as the procedure for identifying other systemically important institutions (O-SIIs), in which factors such as the size of the institution, its economic importance, cross-border activities and interconnectedness with the financial system are already assessed as part of a scoring system.

In addition, we would like to point out that the institutions classified as "other" institutions under the CRR categorisation are subject to a range related to the total assets criterion of EUR 25 billion. In this case, too, the selectivity is too low for a proportionate regulatory differentiation. With regard to the German banking industry, for example, numerous savings banks, cooperative banks and private banks are included in this category of "other" institutions that only operate regionally and, for this reason alone, require different regulation than institutions that operate nationwide or even internationally. If necessary, the importance of the institution for financial stability could also be analysed here; institutions that operate regionally and have a simple business model do not generally pose an excessive threat to financial stability, even if they were to be wound up in exceptional cases.

5. Do you agree with Classification IV for investment firms to be used for proportionality assessment, where relevant? Do you consider necessary the EBA to establish an additional classification according to the size of investment firms?

Under the EBA proposals, Classification III will be determined using the current definitions for small and non-complex institutions in point 145 of Article 4 of the CRR and for large institutions in point 146 of Article 4 of the CRR. Classification IV for investment firms will also be based on size and business activities in line with the IFR/IFD.

The IFR/IFD created a separate supervisory regime for investment firms. Whereas large investment firms will be placed on an equal footing with CRR credit institutions, smaller and medium-sized securities institutions will be subject to less strict requirements. In the course of the new requirements, the definition of a credit institution in point 1b)i) of Article 4 of the CRR was expanded to include large investment firms. However, the new definition of a credit institution also covers small and medium-sized investment firms if they belong to a group. Under point 1b)ii) of Article 4(1) of the CRR, investment firms with total assets below EUR 30 billion are therefore placed on an equal footing with CRR credit institutions if they belong to a group in which the total value of the consolidated total assets of all companies in the group that individually have total assets of less than EUR 30 billion and carry out one of the activities listed in Annex I section A nos. 3 and 6 of Directive 2014/65/EU is EUR 30 billion or more. This means that small and medium-sized investment firms, which are generally supposed to be subject to less strict prudential requirements, would be considered as CRR credit institutions if they are members of a group.

As a result of the requirements of point 1b)ii) of Article 4(1) of the CRR, small and medium-sized investment firms with assets of less than EUR 30 billion could therefore fall into the category of a large institution (Classification III when considering the consolidated group in accordance with point 146d) of Article 4 of the CRR) or Category 1 of investment firms (Classification IV) by virtue of their group membership. However, this would not be appropriate in light of the size and risk profile of the individual investment firm.

Although we believe that the approach of basing the classification of an institution on its qualification under the CRR and the IFR/IFD is fundamentally correct, this approach would, however, be the wrong way to classify the investment firms in question, since these companies would be only classified in the "highest" category because of their group membership.

The sole focus of the proportionality test on the qualification linked to group membership would exclude the investment firms concerned from possible future relief at the level of the individual institution that would be granted to comparable non-group investment firms. Therefore, above and beyond qualification under the CRR and IFR/IFD, a further distinction should be introduced that considers whether classification has been made on the basis of meeting the relevant criteria at the level of the individual institution or the group. At the very least, however, institutions should be classified and captured separately under Classifications III and IV in accordance with point 1b)ii) and iii) of Article 4(1) of the CRR.

6. Do you agree with the predefined metrics above? Do you have any further suggestions for the presentation of results, the addition of new metrics or the modification of the proposed ones?

We agree that existing data should first be used before additional data requests are launched. The expenditure for banks should be limited to the absolute minimum unless the benefits outweigh (see No. 84 & 85).

The assessment of the impact on key figures (such as capital ratios and liquidity ratios) is understandable but the predefined metrics lack benchmark ratios. How will any (expected) reduction of a LCR or NSFR be evaluated? Do you plan to use backtesting results and volatility calculations?

As a result of proportionality measures, the implementation and ongoing cost of regulatory compliance should be reduced (see also results of CoC study).