On 22 September 2015, the European Commission published its consultation paper "Call for Evidence: EU Regulatory Framework for Financial Services". We appreciate the opportunity to submit our comments.

Before elaborating on our examples on the specific aspects of the call for evidence we would like to make some general comments.

Rules affecting the ability of the economy to finance itself and grow

As a general principle, higher costs resulting from regulatory requirements can force banks to change their business model. This could result in banks reducing their assets or cutting back on increasing them. For example, the SME Supporting Factor in Article 501 of the CRR does not cover potential increases in the own funds requirements for SME loans that may be triggered by the countercyclical or the systemic risk buffer. This could result in restrictions on lending to SMEs. [1] Overall, the SME Supporting Factor should prevent an increase in own funds requirements for SME loans, and should therefore be retained permanently. Especially in Germany, bank loans are the most important form of funding for SMEs apart from equity.[2]

The diversity of the EU's financial sector depends in particular on the wide variety of sizes of institutions in the EU. The costs resulting from the implementation of the regulatory requirements are proving to be a struggle especially for small institutions.[3]

In the case of many regulatory requirements, their implementation does not provide for proportionality. Proportionality is necessary and it should manifest itself in particular in a requirement that small banks should not be affected at all by reports up to certain thresholds, instead of merely reducing the frequency of their submission – ultimately, the latter means that the requirements still have to be implemented functionally and technically, and merely reduces the recurring effort and expense. In this respect, proportionality – if it is considered at all – falls far too short in many cases to be able to sustainably relieve small and mid-sized institutions of the costs of regulatory projects. Ultimately, there is a risk that the disproportionately high costs of regulation for small and mid-sized institutions will promote "market distortions that favour certain forms of organisation and business sizes".[4] With regard to the topic of proportionality we would like to refer to the report by the EBA Banking Stakeholder Group „Proportionality in Banking Regulation" published on 10 December 2015.

Due to the actual regulatory burden – resulting in decreasing assets as well as shrinking profits – there is an inflationary trend for mergers within the banking industry and the shutdown of certain business divisions. This however results in larger and more interconnected banks, hitting financial stability more intensive in case of insolvency. Additionally, these effects will diminish diversity within the EU financial sector. It is therefore the current financial legislation foiling one of the major aims of the Commission. The recent proposals of EBAs Banking Stakeholder Group to check each legal text with a special emphasis on the principle of proportionality are going in the right direction (see BSG report "Proportionality in Bank

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[1] Report by Professors Hackethal/Inderst (on behalf of BVR): Implications of current regulatory changes for small and medium-sized banks (with focus on German cooperative banks), September 2015, Section 2.2.1.3.

[2] Ibid, 3.3.2.1 as well as Diagnose Mittelstand 2015 (SME Diagnosis 2015) – Credit Financing or Capital Market, German Savings Banks Association (DSGV).

[3] Report by Professors Hackethal/Inderst (on behalf of BVR): Implications of current regulatory changes for small and medium-sized banks (with focus on German cooperative banks), September 2015, Section 5.5.4.1 (Fig. 42).

[4] Ibid, Section 7.3.1 (p. 111).

Regulation"). Regarding the institutional framework we suggest to implement respective procedures on level 1 as well as on level 2. Hereby the costs of implementation for small and medium-sized, not systemically relevant institutions should be evaluated as well as the question answered if every single aspect has to be applied to smaller institutions, respectively which alternatives can be envisaged to implement the requirements with lower costs.

Existing requirements or requirements in consultation, which cannot be monitored by smaller institutions in their integrity should in addition be analysed by a high level working group in view of the possibility to better take account of proportionality (please also refer to the a.m. report of the BSG).

Unnecessary regulatory burdens

The number of reports to be submitted has increased substantially. New ones include the LCR, the leverage ratio, asset encumbrance, EMIR and the harmonised funding plans. On top of these there will be the additional liquidity monitoring metrics, AnaCredit, intraday liquidity and SFTR. [5] Looking at the mandatory reporting requirement for "stable funding" according to Art 415 CRR it becomes obvious that it is of no avail. The reporting requirement should initially serve to support the calibration of the NSFR. In its recent report on the NSFR the EBA has now fully ignored these information as the reports turned out to be completely useless.

The period within which all of these reporting requirements had to be implemented was unreasonably short. The costs resulting from the implementation of the regulatory requirements are proving to be a struggle especially for small institutions. [6]

The issues of investor protection and reporting in particular are imposing high regulatory costs on the banks. [7] It should be emphasised here that the average standardised costs compared with total assets are increasing rapidly, especially for small banks with total assets of less than EUR 500 million. [8]

In the past, the legislative timetable has often lead to increased implementation complexity because the legally binding regulations were not published at all before the first reporting deadline (example: asset encumbrance) or only very shortly beforehand (example: COREP reporting). This approach is not acceptable. The result is that institutions and their data centres have to implement reporting templates and their population in the IT systems on the basis of draft English documents. The templates may then be different in the final regulation. This results in additional effort for subsequent modification and in unnecessary manual changes to the templates at the institutions. [9]

The approach adopted for the LCR leads to unnecessary complexity because the templates for Delegated Regulation 2015/61 will probably not be published until May 2016. Similar problems occurred in the context of the European revision of the definition of the leverage ratio and the respective reporting templates. Such an approach is not acceptable and must be avoided in future. Regulatory requirements and their reporting processes should not be imposed until they have been completely formulated and defined. Depending on the extent of the requirements there should also be a appropriate period of at

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[5] Ibid, Section 4.2.1.

[6] Ibid, Section 5.5.4.1, Fig. 42.

[7] Ibid, Section 5.3.3, Fig. 31 as well as Section 5.3.4, Fig 32.

[8] Ibid, Section 5.5.2, Fig. 38.

[9] Ibid, Section 6.

least six months between the final publication of the regulations in the OJ and their effective date, so as to give the institutions and their data centers sufficient time to implement the requirements. If this is not done, it is inevitable that the data quality cannot be optimal.

The aspects described above are accompanied by a large number of ad hoc requests for information from various supervisory authorities that must be answered by the institutions at short notice – over and above the necessary implementation projects. In many cases, there is a suspicion that these requests for information tend to have a statistical or monetary policy background, and are less to do with the actual supervision of the institutions.

Reporting and disclosure obligations

The third pillar of the Basel Framework is market discipline. This is to be achieved through the disclosure of regulatory details. This approach is doubtless beneficial for publicly traded institutions. However, for smaller entities that are not publicly traded, this approach should be to reduce these to a very small volume. The costs incurred by small, non-publicly traded institutions in this area are not proportionate to the benefits.

- Despite the widely publicised efforts of the supervisory authorities, there is double reporting of content to different addressees in many areas.

- The treatment of promotional loans should be adapted to the different regulatory requirements. Government-approved investment programs have to be reflected in the balance sheet of the institution, although they are merely transmitted loans. Pass-through transactions should not be included in the calculation of the leverage ratio.

- The cost and effort involved in capturing the data of individual exposures is too much for smaller and mid-sized institutions. This would be a good place to apply the concept of proportionality.
  Example: ALMM template C 69.00, determination of new business data at single account level on a daily basis.

- National GAAPs are not taken into sufficient consideration. For example, attention has to be drawn – especially in the context of the ECB's reporting systems – to the fact that FINREP is very heavily focused on IFRS institutions, but that IFRSs do not represent the basis of accounting for all banks in Europe, and that nGAAP data therefore often does not fit into the FINREP schema.

Interactions of individual rules, inconsistencies and gaps

In the context of European regulation, one trend that is evident in particular in the area of capital markets law is that necessary detailed requirements are not being stipulated at the Level 2 (i.e. delegated acts) designated for this purpose, but only at Level 3 (i.e. guidelines of the European Supervisory Authorities). However, Level 3 can only relate to consistent interpretation, not to standardising new content-related requirements.
Current examples from MiFID II include voice recording and product governance. In the case of voice recording, there is still no authorisation for voice recording – something that is needed to meet data protection requirements. This means that the extent of the voice recording obligation is currently still unclear. The institutions cannot therefore assess reliably how many workstations etc. they need to equip

with a voice recording device. It should be noted that a lead time of at least one year is needed to implement the voice recording devices. The same applies to the specific details of the requirements for target market identification. This is planned for Level 3, in other words far too late to be able to ensure that this requirement is also implemented by the specified deadline.

This approach is problematic for a number of reasons:

- This effectively bypasses the right of the European Parliament and the Council to object to Level 2 proposals that is provided for at Level 2.

- Legal certainty, which is also necessary for IT implementation in particular, will be established too late. To all intents and purposes, this means that the implementation period available to the institutions, which is based on the publication of the Level 2 detailed requirements, will be considerably shortened. Implementation on an uncertain basis cannot be considered because it would lead to additional implementation effort at the institutions that would not be necessary if the detailed requirements were to be available in good time.

As a general rule, an implementation period should only start running once the final Level 2 detail requirements for a Level 1 directive/regulation have been published. In addition, content-related requirements must be standardised at Level 1 and Level 2. Level 3 must be restricted to interpretations of Level 1 or Level 2 requirements only.