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Launched in 1960, the European Banking Federation is the voice of the European banking sector from the European Union and European Free Trade Association countries. The EBF represents the interests of some 4,500 banks, large and small, wholesale and retail, local and cross-border financial institutions. Together, these banks account for over 80% of the total assets and deposits and some 80% of all bank loans in the EU alone.

EBF COMMENTS ON A DRAFT ECB REGULATION

ON REPORTING OF SUPERVISORY FINANCIAL INFORMATION

Key Points

(1) We are disappointed to note that better regulation principles have not been met and that due process requirements have not been observed.
(2) Our understanding is that the proposed regulation lacks a valid legal basis particularly where it seeks to extend the regular reporting of supervisory financial information to reports at the solo level.
(3) The data included in the proposed FINREP package overlap with the statistical data which banks are required to submit to the ECB. Such an outcome is not in line with the objective of the ECB to ask every piece of information only once.
(4) We suggest that one of the recitals would draw the attention to national supervisors that they are not authorised to top up the harmonised EU supervisory reporting framework with additional supervisory reporting requirements.
(5) The ECB lacks the authority to impose, in its capacity of host supervisor, supervisory reporting requirements on branches which non-SSM banks have established within the SSM area.
(6) The Regulation should clarify that reporting is required on the highest level of consolidation (per country) only and, therefore, not by all levels of sub-groups.
(7) The proposed implementation timing is too ambitious.
(8) We suggest setting the asset threshold on the basis of an entity's contribution to the balance sheet of the parent company.
(9) The proposed Regulation has not considered the implications of the Principle of Proportionality in a sufficient and appropriate way.

I DUE PROCESS

The EBF is disappointed to note the following:

- As explained in the "Questions and Answers for Public Consultation" which have been posted on the ECB Website, the draft ECB Regulation is the result of work and discussions that have been undertaken over a period of more than two years. Yet, the European Central Bank has not taken any initiative to involve the industry in the preparation of the proposed reporting package notwithstanding the substantial burden and costs that will the new requirements will involve and the huge challenges that their design and the proposed implementation timelines imply, also in terms of data quality.

  As the ECB President highlighted very recently, "*statistical and supervisory data integration requires very close collaboration with the banks that are the main reporting institutions. Data integration on the side of the ECB and the other authorities only comes at the end of a data production process the first input of which is in the internal systems of the banks. The ECB has every interest to facilitate and promote integration and standardisation also on the "input side", in the internal systems of the banks, for only this will ensure coherent information.*"[1]

  Involving the industry in the preparatory work would have been particularly useful considering that the proposed package has been set up on the basis of an accounting standard that will become obsolete in 2018. As a consequence, the proposed Regulation will inevitably need to be substantially amended very shortly. Pragmatic and workable solutions could have been found to satisfy the information needs of the supervisory community in a less than perfect way during an interim period whilst avoiding that banks will become obliged to adapt their practices and/or systems twice within a narrow time span**.**

- The draft ECB Regulation deals with a crucial subject matter. The additional reporting which it aims to introduce will, moreover, have a substantial impact and raises a wide range of issues. A consultation period of merely six weeks is not commensurate to the importance of the subject matter. It is, moreover, not in line with current EU consultation practices allow for a three month consultation period as a minimum.

In these circumstances, we are of the opinion that basic better regulation principles have not been met and that due process requirements have not been observed.

II The Draft Regulation lacks a legal basis

a. ECB mandate with regard to the extension of CRR obligations

(1) Within the EU – including the SSM zone – the European Banking Authority (EBA) has been provided with the task to contribute to the creation of the European Single Rulebook in banking whose objective is to provide a single set of harmonised prudential rules for financial institutions throughout the EU. This explains why it is the

[1] Introductory speech by Mario Draghi, President of the ECB, Seventh ECB Statistics Conference "Towards the banking Union. Opportunities and challenges for statistics", Frankfurt am Main, 15 October 2014.

prerogative of the European Banking Authority to develop supervisory reporting requirements which it needs to submit to the European Commission for endorsement subsequently.

Our understanding is, moreover, that the EBA cannot extend the scope of obligations contained in the CRR on its own initiative. The CRR includes a number of provision which provides the EBA with specific mandates to develop draft Implementing Technical Standards ('ITS') relating to supervisory reporting requirements. The EBA has effectively prepared those ITS which have been adopted by the European Commission subsequently (EU Regulation 680/2014).

Within the SSM zone the ECB is exclusively competent to carry out certain tasks relating to the prudential supervision of banks. The ECB may adopt regulations but only '*to the extent necessary to organize or specify the arrangements*' for its tasks (Article 4, Paragraph 3, SSM Regulation). The draft Regulation imposes a number of requirements on banks for which no legal basis can be found in the CRR or in EU Regulation 680/2014. The ECB's explanation for the extension of existing obligations is that it wishes to address 'data gaps' in supervisory reporting. However, the ECB does not have the legal authority to close data gaps on its own initiative in the area of supervisory reporting which have not been recognised in the CRR. Extension of obligations included in the CRR can only be based on a proper legal mandate i.e. by amending the CRR.

We conclude from what is explained above that the CCR does not provide for an appropriate legal basis for the (proposed) extension of reporting obligations.

(2) The ECB considers Articles 6(5) (d) and 10 of the SSM Regulation and Article 141(1) of the SSM Framework Regulation to be the legal basis for extending the reporting obligations set in the CRR. Those provisions confer the power to the ECB to require supervised entities to report any information that is necessary for the ECB to carry out its tasks, including information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes.

Our understanding is, however, that those provisions do not constitute a valid legal basis to impose material recurring reporting obligations on banks in the way as envisaged in the draft Regulation. The relevant Articles do give the ECB the authority to request information but this power is not unlimited. The ECB's authority to request information has its origin in the CRD and is to be used for specific cases; they do not include the power to impose additional (material) reporting obligations that the EU legislator has not recognised itself.

b. <u>ECB mandate with regard to NCAs acting outside the SSM context and/or other national authorities</u>

We note that the draft Regulation does not distinguish between NCAs acting in their 'national role' or NCAs acting as part of the Single Supervisory Mechanism (SSM).

We agree that the ECB is competent to adopt rules relating to the ECB's monetary or supervisory tasks. The draft Regulation, however, only concerns the ECB's supervisory tasks and not the ECB's monetary tasks. Specific rules with regard to the

ECB's monetary tasks i.e. on financial reporting of the national central banks have been included in the '*Guideline of the ECB of 11 November 2010 on the legal framework for accounting and financial reporting in the European System of Central Banks (recast) (ECB/2010/20)*'. Furthermore, the possibility to exchange information between the ECB's monetary policy function and the ECB's supervisory function has been laid down in the '*ECB Decision of 17 September 2014 on the implementation of separation between the monetary policy and supervision functions of the ECB (ECB/2014/39)*'.

Our understanding is that the ECB cannot adopt rules that relate to the NCAs tasks insofar as the NCAs remain entrusted with supervisory tasks, that have not been transferred to the ECB ('the NCAs acting in their national role') and recommend therefore that any reference made to NCAs acting in their national role is deleted. The same applies to the tasks of the respective national Central Banks.

For example: Article 1 (sub 3) mentions that NCAs and/or Central Banks may use the data collected 'for any other tasks'. Our understanding is that "NCAs" in this context can only refer to NCAs acting in their national role. The possibility to use the financial reporting data collected by the ECB (or NCAs acting as part of the SSM) for other purposes than supervision is regulated by national law (principally based on Article 54 CRD) and is subject to specific safeguards on e.g. confidentiality and proportionality (again based on CRD). We conclude from this that the ECB has no power in this regard.

c. Proper process

The draft Regulation also aims at extending the regular reporting of supervisory financial information to reports at the solo level. This information is not covered by the Commission Implementing Regulation N° 680/2014 of 16 April 2014 laying down ITS with regard to supervisory reporting of institutions.

Our understanding is that, when a competent authority – such as the ECB – considers information not covered by the ITS with regard to supervisory reporting of institutions to be necessary to obtain a comprehensive view on the systemic risks posed by institutions to the financial sector or the real economy, it is required to notify EBA and the ESRB about the additional information it deems necessary to include in the ITS (see Article 99, Paragraph 7, of Regulation n° 575/2013). This means that a competent authority cannot impose on its own initiative supervisory financial information requirements at the solo level

The draft ECB Regulation makes no mention of EBA or the ESRB having been consulted on the information that the ECB seeks to impose on the basis of Article 99, Paragraph 7, of Regulation n° 575/2013. Moreover, no mention whatsoever is being made in the draft ECB Regulation of compelling reasons that might justify extending the supervisory FINREP framework to solo reporting. Our impression is, therefore, that the proposed extension to financial information to be reported at the solo level has not observed a legally required process and, therefore, lacks a legal basis.

III OVERLAPS WITH ECB STATISTICAL DATA COLLECTION

Today, entities located in the SSM countries need to report statistical data on a solo level on a monthly and on a quarterly basis to the ECB according to the ECB statistical Regulations and Guidelines. At the moment, banks are faced with the updated statistical regulation (Regulation (EU) No 1071/2013 - ECB/2013/33) and are currently in the process of adapting their IT-systems accordingly.

The statistical data which banks are required to submit to the ECB overlap with the data included in the proposed FINREP package. For example, FINREP template F 06.00 "Breakdown of loans and advances to non-financial corporations by NACE codes" are already reported to the ECB under the ECB Guideline (ECB/2009/23). FINREP table F 20.07 "Geographical breakdown by residence of the counterparty of loans and advances to non-financial corporations by NACE codes" also asks identical information.

In addition, geographical breakdowns of assets and liabilities are already reported according the ECB Regulation (ECB/2008/32, as amended by ECB/2011/12) and duplicates FINREP tables F 20.01-20.07.

Clearly, such an outcome is not in line with the objective that the ECB is pursuing, i.e. – in the words of its President - to ask every piece of information only once[2]. The ambition to move towards integrated data collection frameworks should result in reduced reporting burden for banks. Work of the Joint Expert Group on Reconciliation of credit institutions' statistical and supervisory reporting requirements is appreciated and should move to a new level by actually reducing the reporting burden not only by harmonizing the definitions and concepts but also recognizing data duplications and eliminating them.

IV MINIMUM HARMONISATION

Whilst the EBA supervisory reporting framework is meant to pursue maximum harmonisation to satisfy the requirements of the Single Rulebook, the ECB Regulation, in contrast, explicitly states that its requirements are merely a minimum and that national supervisors accordingly remain free to top them up with a range of additional requirements.

(1) From a legal perspective, a harmonised supervisory reporting framework cannot be an obstacle to Member States requiring their banks to provide statistical data or other pieces of information (e.g. credit registers) which are not being used for supervisory purposes. However, it is equally clear that it would be unacceptable for Member States to top up the existing supervisory reporting package with additional supervisory reporting requirements.

Against this backdrop, we would like to suggest that one of the recitals would draw the attention to this basic legal principle by making an explicit reference to it.

(2) The draft Regulation sets out the timelines within which national supervisory authorities are required to transmit the data to the ECB. In contrast to the EBA supervisory framework, it does not impose timelines on banks themselves. As a result, each

[2] See the speech of Mr Draghi referred to in footnote 1.

supervisory authority is being provided with a national discretion in this regard which creates an uneven level playing field. This is not in conformity with the provisions of the EU Treaty which aim at establishing an Internal Market which does not distort competition.

V TREATMENT OF BRANCHES OF NON-SSM BANKS

European banking legislation takes as a starting point that branches which banks have established in another EU Member State cannot be made subject to separate supervisory reporting requirements. This was a major change which the Second banking Directive introduced in 1989: branches report only to the home supervisor in principle.

Article 40 of Directive 2013/36/EU provides for an exception to this general principle: it specifies that the competent authorities of host Member States may nevertheless require that all credit institutions having branches within their territories report to them periodically on their activities in those host Member States. However, the information requirements to which branches may be made subject to in application of Article 40 is limited. Host authorities are not allowed to make use of Article 40 to make branches – irrespective of whether they or significant or not – subject to supervisory reporting requirements.

Branches are operating with very limited resources and often with very few staff. Requiring them to report on their activities in accordance with the accounting standards of the host state and to map those requirements subsequently with the templates which are being proposed in the draft ECB Regulation will be a substantial effort considering that the work cannot possibly be automated. As a result, the proposed requirements will be a basic obstacle to the freedom of establishment as it will profoundly discourage non-SSM banks having their head office in the EU to set up branches in SSM countries.

VI REPORTING OBLIGATION ON SUB-CONSOLIDATED LEVEL

Because of the extremely tight deadline that has been imposed to respondents to the consultation, we have not been in a position to carefully examine if the ECB is indeed authorised to impose FINREP reporting on a sub-consolidated basis. Our preliminary view is that it is not authorised to do so.

Anyway, we would like to point out that reporting obligation on sub-consolidated level would result in overlapping reporting and unnecessary reporting burden. The Regulation should clarify that reporting is required on the highest level of consolidation (per country) only and, therefore, not by all levels of sub-groups.

VII IMPLEMENTATION TIMING

The proposed implementation timing (between 31 December 2015 and 30 June 2017) is too ambitious, particularly considering that banks can only be expected to start preparing for the implementation once the Regulation will have been locked down.

Data quality will inevitably suffer from the demanding timing constraints that are being imposed – particularly considering that the banking group will not be provided with sufficient time to examine the data quality of the input provided by its various subsidiaries and branches on the basis of national accounting standards which differ from each other.

VIII THRESHOLD

No explanations are being provided why the asset threshold which the draft Regulation proposes has been set precisely at the level of 1 billion euro. It is not explained either what the possible impact of such a threshold might be, or how many entities might be affected. As a result, one cannot escape the impression that the proposed level has been set in an arbitrary way – which would not be in conformity with generally accepted better regulation principles.

It would seem appropriate to us to set the threshold on the basis of an entity's contribution to the balance sheet of the parent company: only if the balance sheet of the branch or subsidiary including the inter- company before offsetting, represents more than 1% of the consolidated balance sheet of the group, it could be considered as significant.

IX PRINCIPLE OF PROPORTIONALITY

We do not believe that the proposed Regulation has considered the implications of the Principle of Proportionality in a sufficient and appropriate way.

The proposed Regulation may include simplified reporting frameworks for less significant reporters. However, the low threshold which is being proposed (EUR 1 billion) implies that it will not make much of a difference: many small institutions will not be able to take advantage from it.