



Brussels,
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Opinion

Title

DG FISMA - Proposal amending Regulation (EU) 575/2013 on prudential requirements for credit institutions and investment firms, Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms

(draft version of 27 July 2016)*

(A) Context

The Commission announced in a 2015 Communication that it would bring forward proposals to amend the CRR (capital requirements regulation) and the CRD (capital requirements directive). A main purpose was to incorporate into EU law the remaining elements of the regulatory framework agreed by the Basel Committee on Banking Supervision (BCBS). Further, the Communication envisaged development of a proposal on total loss absorption capacity (TLAC) to be implemented by 2019.

Within a broader context of ensuring appropriate prudential requirements, responding to the financial crisis, taking on board responses to the call for evidence and implementing the banking union, several amendments to the CRR and the CRD aim to provide legal certainty and discourage regulatory arbitrage, both within the EU and globally.

The impact assessment also considers recalibration of the capital requirements for exposures to SMEs in order to support the Commission's objective of growth and jobs. Finally, the impact assessment considers a number of other issues such as the remuneration of bank staff and resolution issues relating to the BRRD (framework for recovery and resolution of credit institutions).

(B) Overall opinion: NEGATIVE

The Board gives a negative opinion because the report contains shortcomings that need to be addressed, particularly with respect to the following issues:

(1) The policy context of the package and its many components is unclear. Basel recommendations drive some of the policy initiatives, others stem from results of a call for evidence, or the European Deposit Insurance Scheme (EDIS) proposal. The report should explain what is driving each respective proposal, why there is a need to act now, and whether further action is likely to follow. There is not a convincing

*Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

justification why most of the measures are presented as uncontroversial and relegated to an appendix.

(2) Evidence and stakeholder views do not feature enough in the report. There is scope to do more to support the problem definition, options identification and impact analysis.

(3) The impacts of each option are not sufficiently discussed and quantified. Also, the overall estimated impact of the full package has not been outlined with regard to funding costs, lending, financial stability and administrative and compliance costs. It is unclear what the impacts would be in certain specialised market areas, including covered bonds, securitisation and market making.

The lead DG shall ensure that the report is revised accordingly and resubmitted to the Board, which will issue a new opinion on the revised draft.

(C) Main recommendations for improvements

(1) Clarify the policy context. State the drivers and the relative significance of each of the many proposed measures. Explain to what extent the measures respond to Basel recommendations, the call for evidence and the EDIS proposal respectively. It should be clear why there is a need for action now, and whether these 21 measures represent a complete response or whether further action will be needed.

The call for evidence aims at establishing general coherence in the regulatory framework, so the choice of a 'piecemeal' approach requires justification. Explain the packaging of measures. Also, make clear which types of implementing measures are envisaged (primary and secondary law).

Provide an overview of the 21 problem definitions. This can be done with a table presenting the specific problems, their magnitude or importance, the foreseen response, and the planned legal instrument for implementation. Further, the link between policy context, problem definitions, objectives and comparison of options should be made clear for every problem in a consistent structure (e.g. the context of EDIS and other regulations, problem definitions vs. financial risk, etc.).

(2) Present more evidence. The IA should make better use of the evidence delivered by BCBS in the development of the recommendations for the agreed regulatory framework. The report states that more evidence is under preparation from EBA. This should be included. Other complementary sources of evidence could also be activated to strengthen the evidence basis, like test models etc. The IA should more systematically include stakeholder views and the results of the call for evidence throughout the analysis. All relevant evidence underpinning the assessment of impacts of the various options should be incorporated.

(3) Better elaborate and quantify impacts of the options. Whenever possible, present what stakeholders have said. Clarify specific impacts of each option on relevant stakeholders as well as the overall impacts of the package. Link the costs of the proposal with its intended objectives. Identify when preferred options are expected to affect particular markets and what magnitude these will have. The foreseen impacts of the full package should be estimated with regard to funding costs, lending, financial stability, administrative burdens and compliance costs. The accumulated administrative burden imposed by financial regulation since the financial crisis is unclear but is presumed to be substantial. The IA should estimate impacts of the proposal on administrative burdens and compliance cost and should consider financial SMEs separately in this respect. The report

should also explain more clearly how options will apply to specialised European institutions in the fields of covered bonds, securitisation, market making, trade and export finance, etc. Concerning subsidiarity, some measures are proposed in part to create a "level playing field". This needs to be nuanced given regulatory differences across countries, institutions and segments in the financial sector. The IA should better demonstrate why greater EU harmonization provides benefits, and explain what remaining subsidiarity national regulation will have and why this is justified (e.g. to allow national authorities to impose additional requirements reflecting country-specific circumstances).

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated into the final version of the impact assessment report.

(D) Procedure and presentation

Revise the structure and presentation to make it reader-friendly for non-specialists. Include a glossary of acronyms.

(E) RSB scrutiny process

Reference number	2016/FISMA/014, 2016/FISMA/06
External expertise used	No
Date of RSB meeting	7 September 2016