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Association for Financial Markets in Europe

Consultation response

Guidelines on the criteria to determine the conditions of application of Article 131(3) of CRD in relation to the assessment of O-SIIs (EBA/CP/2014/19)

17 October 2014

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on **EBA/CP/2014/19**. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

We summarise below our high-level response to the consultation.

Key comments

List and use of optional indicators should be balanced against need to achieve a level playing field

Overall we support the EBA's efforts to ensure consistency with the BCBS methodology for identifying D-SIBs, as this contributes to a global level playing field. However, we are concerned that progress towards a level playing field is hampered somewhat through the proposed use of optional indicators, which the EBA encourages competent authorities to apply for O-SII identification. We consider the list of optional indicators as overly extensive, which may give rise to inconsistent application of the Basel principles. Therefore we do not believe that an appropriate balance has been struck between the harmonized quantitative scoring framework and the more flexible supervisory overlay of optional indicators.

Having said this, we do recognise that a certain level of discretion to supervisors is foreseen both in the BCBS methodology and in the CRD. Therefore, to restore an appropriate balance, we recommend limiting the allowed discretion by adequately reducing the optional indicators, rather than eliminating discretion entirely. We would also recommend that the usage of the indicators should be better defined by some agreed pre-conditions. For example, usage of the optional indicators should:

- only be allowed if the relevant authorities can justify ex-ante their added value
- be limited to a total weight of , say, 25% in the calculation
- as much as possible be limited to metrics already reported

Scope of main indicators is unclear and requires further consideration as inconsistent with the Basel principles

The scope for most indicators is defined as being on a 'worldwide' basis. We appreciate that the list of the main indicators has been largely aligned with the indicators for G-SII reporting. However, on balance, we find it difficult to understand why the scope of the indicators used to assess the systemic importance of *domestic* banking institutions should be assessed on a *worldwide* basis (with the exception of 'Private sector deposits from depositors in the EU' and 'Private sector loans to recipients in the EU' which would be assessed at the EU level).

Indeed this emphasis seems at odds with the BCBS D-SIB framework and CRD objective which is the identification of domestically systemic banks i.e. institutions whom distress or failure would have a potential disruptive impact on the domestic economy (including by international banks) they belong to and not (a priori) on the global economy (in this case they would be qualified as G-SIIs).

We acknowledge that the BCBS does not limit the activities considered in the assessment to domestic ones, the rationale being that a banking group or sub-group that engages in cross-border activity could be impacted by the failure of subsidiaries and operations in other jurisdictions; and not just the part of the group that undertakes domestic activity in the considered economy.

However, whilst the indicators should not overlook significant operations outside the EU domestic jurisdictions, they should focus on the importance of the activities of a bank for the domestic economy of the particular member state(s). We do not think the indicators as scoped would enable such an assessment.

We support the exclusion of liabilities and claims within the same host country from the 'cross-jurisdictional liabilities and claims' indicator. At a minimum, this should be extended to the other indicators which are expressed currently as 'worldwide', and in particular to payments activity. Ideally, a much simpler, composite measure of significant business activities in jurisdictions outside the EU should replace the 'worldwide' dimension of all the indicators.

Interaction between O-SII and G-SII methodologies should not lead to double-counting of capital buffers

Since all current rules and proposals in this area appear to permit the possibility of G-SIIs being simultaneously designated O-SIIs, it is essential that these proposals be very clear in their definitions of 'group' and 'consolidation' and their use of such terms, as well as on the interaction between the G-SIB and O-SII methodologies where the identification of O-SIIs within a G-SII group is concerned. Title 2, paragraph 5, for instance, refers to a supervisor calculating a score for each relevant entity "at least at the highest consolidation level of the part of the group that falls under its jurisdiction." But where both the 'EU parent financial holding company' and the 'institution authorised' fall under its jurisdiction, it is not clear whether or in which circumstances that consolidation would be the overall group consolidation at the highest level, or the sub-consolidation at the authorised institution level. It is important there be total clarity in the O-SII assessment process, in order that there should be a robust foundation for clarity in the subsequent assignment of G-SII and/or O-SII charges to entities at different levels in such banking groups. We are concerned at the potential, otherwise, for 'double-counting' of charges to occur.

Along these lines, we think that for G-SIIs that are also considered systemic in the home jurisdiction, the additional local buffer should never be above the global buffer. The impact that an institution could pose in a local economy by its failure cannot be higher than the damage that the failure of an institution could pose to the global system. Thus, if the additional global buffer is enough to address the global systemic impact, there is no need for additional buffer at local level to address the local systemic impact. The allocation of G-SII buffer by geographies could be an option.

Moreover, the allocation of the O-SII capital buffer must be adjusted according to the business model of each banking group. Therefore, in a group organized in standalone subsidiaries, the balance sheet that is relevant to measure the degree of systemic importance in the home country is the parent balance sheet and not the consolidated one as this model reduces contagion among the different parts of the group.

The O-SII identification process should not extend the scope of reporting requirements defined in CRR / CRD

Whilst we recognise that the EBA is trying to strike a balance between a transparent, objective process and the allowance for supervisory overlay, we believe that the same outcome – identifying systemically important firms – could be achieved with a less onerous process. The proposed quantitative process could be considered unduly burdensome and an unnecessary bureaucratic drain on the resources of firms, NCAs and the EBA. The burden is most acutely felt by smaller firms that are highly unlikely to ever be considered systemically important. Related to this, we consider the threshold of 0.01% of the Member State's total banking sector below which an O-SII assessment will not be performed to be too low. We are concerned that it will result in many banks being assessed even when they are highly unlikely to be domestically systemically important. We propose that the threshold is increased to 0.1%. In this context, the Guidelines for identification of other systemically important firms should not extend the reporting requirements defined in the CRR and CRD, without due consideration of the costs and benefits. One example would be the FINREP reporting requirements.

We note that EBA has used FINREP data items to define all of the indicators that will be used in the quantitative process. It is unclear how the quantitative metrics will be collected for firms that are out of scope of the FINREP requirements. The CRR clearly sets out the scope of these reporting requirements and the EBA, through these Guidelines, should not define requirements which would lead to the extension of FINREP. We believe this would be beyond the mandate of the EBA.

We would also highlight that some large organisations that have subsidiaries which may be caught by the O-SII assessment. It should not be assumed that FINREP data is readily available at the necessary granularity required for each subsidiary, even if the organisation already produces FINREP at a consolidated level. To produce FINREP data for each individual entity and sub-consolidation group would potentially be a larger reporting burden than originally envisaged.

We believe there may be scope for the EBA to be more efficient and cost effective, whilst still achieving the same goals, by utilising existing supervisory reporting requirements.

Observations on the usage of the O-SII designation

Whilst we acknowledge that this consultation is intended to cover the guidance for the designation of O-SIIs, where the EBA has a limited mandate, the industry has some observations on the use of the O-SII designation and transparency on the application of capital buffers. We hope that these observations will be helpful as the range of tools available to regulators and the thinking on macro-prudential risk management continues to develop.

We recommend that at an appropriate European authority, for example EBA or ESRB, maintain an up-to-date publication of the various national buffers that are applied by Member States. It is important to maintain transparency and comparability where Member States use their discretion to apply different macro-prudential tools. We believe that the ESRB is best placed to perform this role given the reporting and notification requirements included in the CRD.

We would like to highlight that the subjective nature of the O-SII designation – as set out in these guidelines - means that it is not the most appropriate mechanism to define the scope of requirements elsewhere in the regulatory framework (for example, the scope of requirements on reporting, disclosures or recovery and resolution). We recommend that the O-SII designation is not used to define the scope of requirements without sufficient consideration of alternative options which may be more relevant and appropriate.

ESRB advice

There is no reference to ESRB advice, which was required under the CRD mandate (Article 131.3) before developing these guidelines. In the interests of openness and transparency, please could we ask the EBA to make publically available any bilateral advice from the ESRB, if it was indeed provided.

We would be pleased, of course, to discuss with the EBA the issues covered in this consultation, or to provide further information about any of the matters which our members have raised if that would be helpful.

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