Deutsches Aktieninstitut

Bank Regulation: Amendments to the Risk Reduction Package Take the Right Direction

Non-financial companies encourage the co-legislators to limit the mandate of supervisory authorities under the supervisory review process

Position Paper of Deutsches Aktieninstitut for the Trilogues on the Proposal to Amend Directive 2013/36/EU (the Capital Requirements Directive or CRD) and a proposal Regulation (EU) 575/2013 (the Capital Requirements Regulation or CRR, 31 August 2018

CRD 5/CRR 2: Trilogues should take over some important amendments for non-financial companies.

German non-financial companies represented by Deutsches Aktieninstitut have always called for a balanced approach in bank regulation in order to avoid both systemic risks and overly restrictive limitations of bank capacities to provide efficient intermediation services to the non-financial sector.

Against this background, we have criticized certain elements of the EU Commission's proposals to amend the Capital Requirements Directive (CRD 5) and the Capital Requirements Regulation (CRR 5) for potentially having an overly negative impact on the non-financial companies' ability to hedge against currency, interest rate and commodity price risks linked to their operational business.

Fortunately, both the Council's General Approach and the Report of the European Parliament took our concerns into account and suggested important improvements to the original proposal of the European Commission. More concretely:

(1) Supervisory Review and Evaluation Process (Art. 104a CRD 5)

The amendments by the Council and even more by the European Parliament constitute clear progress because the mandate of EBA and competent authorities under the Supervisory Review and Evaluation Process (SREP) is less broad and unspecific then in the EU Commission's proposal. The Council as well as the European Parliament clarify that the SREP cannot be used to counteract explicit exemptions from own funds requirements, granted in the CRR – at least not on a regular basis. This takes our main concern in this context into account, that the exemption of Art. 382(4)(a) for the own funds requirements for potential CVA risks from derivative positions with non-financial companies could be countervailed by a broadly applied supervisory action.

We particularly support the amendments of the European Parliament to recital (9) because it now clarifies that the SREP „should not conflict with the specific treatments set out in Regulation (EU) No 575/2013 aimed at avoiding unintended impacts on financial stability, credit supply and the real economy." In the same spirit, it is clarified by both co-legislators that risk evaluation under the SREP has to be applied only on a bank-individual basis. In addition, neither the European Parliament nor the Council equip EBA with the competence to issue a RTS on the SREP and amend Art. 104a in order to clarify the discretionary character of the SREP.

We therefore encourage the co-legislators to reach an agreement on this basis, so that SREP cannot be used to countervail the particularly important exemption of Art. 382(4)(a) through the back door and against the political will manifested in the CRR. We would also appreciate if the explanatory wording as in the EP's

amendment was kept in the final text, as it underlines the political rationale of the Art. 104a.

This would also be in line with the regulatory concept of the SREP, according to which competent authorities should decide on a bank specific basis whether in exceptional circumstances additional own funds need to be required. This bank-specific nature will be preserved, so that additional own funds for CVA risk can only be demanded in exceptional circumstances and not as a general rule.

(2) Net Stable Funding Ratio (Art. 428ff. CRR 2)

Our main concern with regard to the Net Stable Funding Ratio (NSFR) has been that it may have a negative impact on the prices and the availability of hedging instruments. Therefore, we have called for a careful evaluation of the RSF factor for gross derivative liabilities, the theoretical and empirical justification of which is still discussed.

Thus, we welcome that both the Council and the European Parliament (the latter at least partially, for more complex institutions) follow the more recent communication of the Basel Committee and reduce the RSF-factor for netting sets of derivatives contracts to 5 percent (Art. 428s para (2) respectively (1a)) which is clear progress compared to the original EU Commission's proposal.

Again, we encourage the co-legislators to reach an agreement on this basis, which should minimize impacts on corporate operative business.

Overall, we appreciate that both the Council and the European Parliament have thoroughly considered our concerns and taken a balanced approach to bank regulation. We are sure that the amendments above will contribute to financial stability without hampering the banks' abilities to provide important hedging services to non-financial companies.

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